THE

CONSTITUTION OF VIRGINIA

AN ANNOTATED EDITION,

BY

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TOGETHER WITH A

REPRINT OF THE PREVIOUS CONSTITUTIONS OF VIRGINIA.

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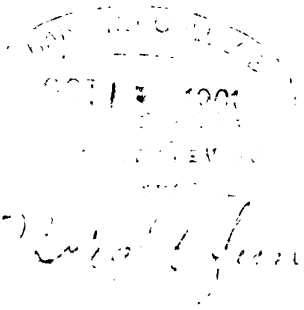

PREFACE.

In preparing this edition of the Constitution, though aiming to make it useful to the members of the legal profession, I have been actuated principally by the hope that it might be of service in the constitutional revision now about to be undertaken. I have endeavored in the notes by references to the former Constitutions to show the changes made by the present Constitution in the organic law of the State, and by the citation of decided cases to show the construction put by the Court of Appeals on the several provisions of the Constitution which have come before it. I have added occasional comments, but have not made the notes the vehicle of my own views, my object being rather to show the Constitution as it is. The more difficult and responsible task of reconstructing it fortunately devolves upon the able and representative Convention which has been elected for that purpose.

The Appendix, in addition to a reprint of the former Constitutions, reproduces the Act of February 16, 1901, providing for the election and organization of the Convention and the submission of its work to the people, and contains statements showing in detail the vote at the several elections held under the present Constitution on the question of calling a constitutional convention.

A. R. L.

Lynchburg, Va., June 6, 1901.

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CONSTITUTION OF VIRGINIA.

The present Constitution as originally adopted was framed by a Convention, elected under the Reconstruction Acts of Congress of March 2d and 23d, 1867, which assembled at Richmond December 3d, 1867, and adjourned April 17th, 1868. Of this Convention the following account is given in an Address to the People of Virginia issued by the Conservative members of the Convention just after its adjournment:

"The Convention consisted of one hundred and five members, of whom some thirty-five were Conservatives, some sixty-five were Radicals, and the remainder doubtful. The Radicals were composed of twenty-four negroes, fourteen native-born white Virginians, thirteen New Yorkers, one Pennsylvanian, one member from Ohio, one from Maine, one from Vermont, one from Connecticut, one from South Carolina, one from Maryland, one from the District of Columbia, two from England, one from Ireland, one from Scotland, one from Nova Scotia, and one from Canada. Of the fourteen white Virginians belonging to this party, some had voted for secession, others had been in the Confederate service, others are old men whose sons had been in the Confederate army; hardly one had a Union record. A large proportion of the Northern men and foreigners were drifted here in some non-combatant capacity by the war.

"The Convention organized by electing a New Yorker president. A native of Maryland was elected secretary. A Marylander was elected sergeant-at-arms. An Irishman, resident of Baltimore, was elected stenographer. The assistant clerk was from New Jersey. Two negroes were appointed doorkeepers. A clergyman from Illinois was appointed chaplain. Even the boys appointed as pages, with one exception, were negroes, or sons of Northern men or foreigners; while the clerks of the twenty standing committees, with two or three exceptions, were also Northern men or negroes."—*Richmond Dispatch*, April 20, 1868.

This address was signed by Chas. T. Duncan, of Scott; Adolphus W. Harris, of Nelson; J. W. Broadus, of Amherst; J. C. Southall, of Albemarle; J. M. French, of Bland; Jos. A. Waddell, of Augusta; Powell Harrison, of Augusta; Hugh H. Lee, of Roanoke; William McLaughlin, of Rockbridge; Lewis Linkenhoker, of Botetourt; Jos. T. Campbell, of Washington; Eustace Gibson, of Giles; J. C. Gibson, of Rappahannock; N. Berkley, of Loudoun; Frederick C. S. Hunter, of King George; G. R. Cowan, of Russell; M. F. Robertson, of Franklin; James Gibboney, of Wythe; J. H. Thompson, of Smyth; George E. Plaster, of Loudoun; Jno. L. Marye, Jr., of Spottsylvania; R. Taylor Scott, of Fauquier; B. F. Lewis, of Prince William; Jos. Mayse, of Bath; Moses Walton, of Shenandoah; Norval Wilson, of Frederick; Jno. J. Gravatt, of Caroline; George W. Rust, of Page; and J. McK. Kennerley, representing Warren and Clarke.

On account of the suffrage clause, the test oath and disfranchisement clauses, and other provisions which they considered objectionable, the signers of this address, to whom the idea of negro suffrage on any conditions was abhorrent, advised that the Constitution be rejected, and William L. Owen, of Halifax, without endorsing all the views presented in the address, concurred in this advice. Fortunately, the Constitution was not submitted to the people for more than a year; and, in the meantime, Hon. A. H. H. Stuart, recognizing that negro suffrage was inevitable, and deeming the restoration of civil government an imperative necessity, organized the so-called "Committee of Nine," consisting of himself, John B. Baldwin, Wyndham Robertson, W. S. Sutherlin, James Neeson, J. F. Johnson, William L. Owen, John L. Marye, Jr., and John F. Slaughter, two of whom, William L. Owen and John L. Marye, Jr., had been members of the Convention, and, as above stated, had advised the rejection of the Constitution; and, by the patriotic efforts of this committee, permission was obtained from the Federal Government for a separate vote on the test oath and disfranchisement clauses, which were the most obnoxious provisions of the new Constitution, and the Constitution was adopted without them on the 6th of July, 1869, by a vote of 210,585 to 9,136. By this means the provisions embodying the political malignity

and radicalism of the majority of the Convention were eliminated, and a Constitution adopted which, in point of conservatism and in its adaptation to the conditions for which it was framed, does not suffer by comparison with any of its predecessors. The Conservative members of the Convention had builded better than they knew; but the benefit of their work was secured to the people of Virginia, and a way of escape from military government provided by the statesmanship of Mr. Stuart, who, in organizing the "Committee of Nine" and devising the measures, which, with the assistance of Col. Baldwin and the other members of the committee, he carried to a successful issue, rendered the State a service, the great value of which has not been recognized and appreciated as it deserves.

The government went into operation under the new Constitution on the 26th of January, 1870.

The Constitution has been six times amended by the people, and the amendments are incorporated in the Constitution as given in the following pages.

Preamble.—Except two or three immaterial, and perhaps unintentional verbal changes, the preamble is, through the first paragraph, the same as the preamble of the Constitution of 1830; through the third paragraph to the words "and the same having been submitted, &c.," the same as that of the Constitution of 1851; and through the fourth paragraph to the words "the delegates, so assembled, did, &c.," the same as that of the Constitution of 1864. The conclusion of the fourth paragraph and the whole of the fifth paragraph are new; and the last paragraph is the same as the last paragraph of the preamble of the Constitution of 1851, except that the words "invoking the favor and guidance of Almighty God" were inserted by the framers of the present Constitution.

The preamble of the first Constitution, to which the greatest historical interest attaches, was drawn by Jefferson, and the Declaration of Independence, which it antedates, is closely assimilated to it. Except the verbal changes referred to, it has been reproduced in the same form at every revision.

The preamble of the present Constitution is as follows:

Whereas, the delegates and representatives of the good people of Virginia, in convention assembled, on the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and seventy-six, reciting and declaring that, whereas George the Third, king of Great Britain and Ireland and elector of Hanover, before that time entrusted with the exercise of the kingly office in the government of Virginia, had endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good; by denying his governors permission to pass laws, of immediate and pressing importance, unless suspended in their operation for his assent, and when so suspended, neglecting to attend to them for many years; by refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature; by dissolving legislative assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people; when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head; by endeavoring to prevent the population of our country, and for that purpose obstructing the laws for naturalization of foreigners; by keeping among us, in time of peace, standing armies and ships of war; by affecting to render the military independent of and superior to the civil power; by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation for quartering large bodies of armed troops among us; for cutting off our trade with all parts of the world; for imposing taxes on us without our consent; for depriving us of the benefit of the trial by jury; for transporting us beyond the seas for trial for pretended offences; for suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever; by plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people; by inciting insurrection of our fellow-subjects with the allurements of forfeiture and confiscation; by prompting our negroes to rise in arms among us—those very negroes whom, by an inhuman use of his negative, he had refused us permission to exclude by law; by endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence; by transporting hither a large army of foreign mercenaries to complete the work of death, desolation and tyranny, then already begun, with circumstances of cruelty and perfidy unworthy the head of a civilized nation; by answering our repeated petitions for redress with a repetition of injuries; and finally, by abandoning the helm of government and declaring us out of his allegiance and protection; by which several acts of misrule the government of this country, as before exercised under the crown of Great Britain, was totally dissolved—did, therefore, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country would be reduced unless some regular, adequate mode of civil policy should be speedily adopted, and in compliance with the recommendation of the general congress, ordain and declare a form of government of Virginia:

And whereas, a convention held on the first Monday in October, in the year

one thousand eight hundred and twenty-nine, did propose to the people of this commonwealth an amended constitution, or form of government, which was ratified by them;

And whereas, the general assembly of Virginia, by an act passed on the fourth of March, in the year one thousand eight hundred and fifty, did provide for the election, by the people, of delegates to meet in general convention, to consider, discuss, and propose a new constitution, or alterations and amendments to the existing constitution of this commonwealth; and by an act passed on the thirteenth of March, in the year one thousand eight hundred and fifty-one, did further provide for submitting the same to the people for ratification or rejection; and the same having been submitted accordingly was ratified by them;

And whereas, the general assembly of Virginia, by an act passed on the twenty-first day of December, in the year one thousand eight hundred and sixty-three, did provide for the election, by the people, of delegates to meet in general convention, to consider, discuss, and adopt alterations and amendments to the existing constitution of this commonwealth, the delegates so assembled did, therefore, having maturely considered the premises, adopt a revised and amended constitution as the form of government of Virginia;

And whereas the Congress of the United States did, by an act passed on the second day of March, in the year one thousand eight hundred and sixty-seven, and entitled "An act to provide for the more efficient government of the rebel States," and by acts supplementary thereto, passed on the twenty-third day of March, and the nineteenth day of July, in the year one thousand eight hundred and sixty-seven, provide for the election, by the people of Virginia qualified to vote under the provisions of said acts, of delegates to meet in convention to frame a constitution or form of government for Virginia in conformity with said acts; and by the same acts did further provide for the submitting of such constitution to the qualified voters for ratification or rejection;

We, therefore, the delegates of the good people of Virginia, elected and in convention assembled, in pursuance of said acts, invoking the favor and guidance of Almighty God, do propose to the people the following constitution and form of government for this commonwealth.

ARTICLE I.

BILL OF RIGHTS.

"When, on the 15th of May, 1776, the Convention of Virginia instructed their delegates in Congress to propose to that body to declare the united colonies free and independent states, it, at the same time, appointed a committee to prepare a declaration of rights and such a plan of government as would be most likely to maintain peace and order in the Colony and secure substantial and equal liberty to the people. On subsequent days the committee was enlarged; Mr. George Mason was added to it on the 18th. The declaration of rights was on the 27th reported by Mr. Archi-

bald Cary, the chairman of the committee, and, after being twice read, was ordered to be printed for the perusal of members. It was considered in committee of the whole on the 29th of May and the 3d, 4th, 5th and 10th of June. It was then reported to the House with amendments. On the 11th the Convention considered the amendments, and, having agreed thereto, ordered that the declaration (with the amendments) be fairly transcribed and read a third time. This having been done on the 12th, the declaration was then read a third time and passed *nem con.* A manuscript copy of the first draft of the declaration, just as it was drawn by Mr. Mason, is in the library of Virginia." Code of 1849, p. 32.

This declaration in its original form was retained at the revision of 1830, but, at the revision of 1851, sections 7, 8, 10 and 13, according to the present numbers, were amended, the remaining sections being re-adopted without change. The declaration as thus amended was re-adopted at the revision of 1864. Changes, both by addition and amendment, were made by the framers of the present Constitution, and it was incorporated into the Constitution, instead of being prefixed to it, as formerly. In 1894 the 10th section was amended by the people.

Where it is not otherwise stated, the several sections of the Bill of Rights, as given below, were parts of the Bill in its original form, and have not been changed at any of the revisions or by amendment. The changes, whether made in 1851 or 1869, or by amendment, are all noted. The caption, which immediately follows, has been retained at every revision, in its original form:

A Declaration of Rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity as the basis and foundation of government.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

The equality intended by this section is equality of rights, not equality of political privileges. Such privileges when this section

was originally adopted were exclusively in the possession of freeholders. "Our forefathers were wise and practical men. They were neither political speculatists, nor dreamy enthusiasts. They did not strive for an impossible equality, such as had never existed in any society where men have ceased to be equally savage or equally wretched. They did not seek to establish a government theoretically perfect, but, guided by the light of experience, it was their aim to found institutions under which their descendants, secured in the enjoyment of life, liberty and property, might be free, prosperous and happy so long as they possessed the wisdom and virtue essential to the preservation of their glorious heritage." Keith, P., in Smoot v. Building Association, 98 Va. 686.

A law denying a land-owner a remedy for trespass by cattle on lands not enclosed by a lawful fence is not invalid, as an unconstitutional interference with "the means of acquiring and possessing property." Poindexter v. May, 2 Va. S. C. Rep. 142.

2. That this state shall ever remain a member of the United States of America, and that the people thereof are part of the American Nation, and that all attempts, from whatever source or upon whatever pretext, to dissolve said union or to sever said nation are unauthorized, and ought to be resisted with the whole power of the state.

This and the following section were inserted by the Convention which framed the present Constitution. They merely define the relations of the State to the Union and the Federal Government.

3. That the constitution of the United States, and the laws of Congress passed in pursuance thereof, constitute the supreme law of the land, to which paramount allegiance and obedience are due from every citizen, anything in the constitution, ordinances, or laws of any state to the contrary notwithstanding.

See note on preceding section. Compare Art. 6, sec. 2, U. S. Const., which is as follows: "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

4. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

5. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

"Inalienable" in this section as it now stands was substituted by the framers of the present Constitution for "unalienable," which appears from the Code of 1819, the Supplement to that Code, the Code of 1849, and the Acts of 1852, and the Code of 1860 to have been the original form.

6. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

This section was intended to provide against heredity in office, and has no application to the private relations of citizens, nor to the power of the legislature to pass laws regulating the domestic affairs of the people, or any portion of them. Charters of incorporation, vesting the incorporators with special privileges, which are not conferred on the mass of citizens, are not in conflict with it. Smoot v. Building Association, 95 Va. 686.

7. That the legislative, executive, and judicial powers should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all or any part of the former members to be again eligible or ineligible, as the laws shall direct.

In its original form the first part of this section was as follows: "That the legislative and executive powers of the state should be separate and distinct from the judiciary; that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people," &c., as above. The change was made at the revision of 1851, when all life tenures of office were abolished and fixed terms prescribed for the offices in all the departments. The judges had previously held office "during good behavior," or for life.

As to the separation of powers, see Art. II. and note.

8. That all elections ought to be free, and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented, for the public good.

There has been no change in this section except in the first clause, which was originally as follows: "That elections of members to serve as representatives of the people, in assembly, ought to be free." The present form was adopted at the revision of 1851, when the election of all officers, with but few exceptions, was committed to the people.

General Purpose.—The general purpose of this section was to secure freedom of elections; to give the principle of the right of suffrage; and to protect those having that right against taxation by laws to which they do not assent by themselves or their representatives. County Levy Case, 5 Call, 139.

Freedom of Elections.—The provision for free elections relates primarily to elections by the people. As it originally stood it was limited to elections of members of the Assembly, but, as no other officers were then elected by the people, it was, in effect, as comprehensive as it is at present, and applied then, as it does now, to all popular elections. In Pearson v. Supervisors, 91 Va. 322, it was held that this provision was not violated by the election law of March 6, 1894, establishing the booth system of voting.

Taxation and Representation.—For local purposes the power of taxation may be delegated by the legislature to local agencies not elected by the persons against whom the taxes are levied, the taxes in such case being in a legal sense imposed by their representatives in the legislature. In Langhorne & Scott v. Robinson, 20 Gratt. 661, an act authorizing the common council of Lynchburg, elected by voters within the city limits, to tax persons and property not only within, but for half a mile around and outside of, those limits was held not to be unconstitutional. So, also, the power of taxation was lawfully exercised by the old county courts in making county levies, though the justices of those courts were

not elected by the people. County Levy Case, 5 Call, 139; Harrison Justices v. Holland, 3 Gratt. 247.

9. That all power of suspending laws, or the execution of laws by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

10. That in all criminal or capital prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with his accusers and witnesses, to call for evidence in his favor and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; but the general assembly may, by law, provide for the trial otherwise than by a jury of a man accused of a criminal offence not punishable by death or confinement in the penitentiary; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgment of his peers.

Amendment adopted in 1894. See Acts 1893–94, p. 249. At the revision of 1851 the words "of twelve men" were inserted after "jury," and as thus amended this section was readopted at the revision of 1864. The framers of the present constitution restored the original form. By the amendment, adopting the present form, the words "capital" and "criminal" were transposed, "his" was substituted for "the" before "accusers and witnesses"; and after the word "guilty" were inserted the words "but the general assembly may, by law, provide for the trial otherwise than by a jury of a man accused of a criminal offence not punishable by death or confinement in the penitentiary." See Judge Burks's criticism of this amendment quoted in note to this section on "Trial by Jury."

General Purpose.—The rights enumerated in this section "all stand upon an equal footing; they are all necessary to the complete enjoyment of that personal liberty which is our birthright, and which it is the duty not only of the courts, but of every citizen, to jealously guard. They are all designed, the one not more than the other, to safeguard the accused in all criminal prosecutions, so that no man may 'be deprived of his liberty except by the law of the land or the judgment of his peers;'" Keith, P., in Brown v. Epps, 91 Va. 726.

Law of the Land.—This phrase is equivalent to "due process of law," the guaranty of which, uuder Amendment XIV., U. S.

Const., extends not only to life and liberty, but to property rights as well. Violett v. Alexandria, 92 Va. 561; Heth v. Radford, 96 Va. 272.

The provision that no man shall be deprived of his liberty "except by the law of the land, or the judgment of his peers," does not apply against the State so as to prevent the collection of taxes by means of summary arrest and imprisonment. Commonwealth v. Byrne, 20 Gratt. 165.

Trial by Jury.—The right of trial by jury secured by this section is the right as it existed when the constitution was adopted, and, notwithstanding the broad language of the provision, there are many petty offenses against statutes and municipal ordinances, such as Sabbath-breaking, drunkenness, vagrancy, and a vast variety of others, which are triable without a jury. *Ex parte* Marx, 86 Va. 40. Keeping a bawdy-house is not one of this class of offences. Mary Miller's Case, 88 Va. 618.

In the case last cited it was held that the guaranty of a trial by jury is not satisfied by a trial without a jury, though with a peremptory right of appeal and a trial *de novo* by a jury in the appellate court; but in the subsequent case of Brown v. Epps, 91 Va. 322, it was held that, though the accused be tried in the first instance without a jury, yet if, on appeal of right, a new trial by jury be secured to him the constitutional guaranty is not violated.

In a note on the latter case, 1 Va. Law Register, p. 24, Judge Burks says: "There is room for difference of opinion as to which of the two decisions expounds the Constitution correctly. The Miller Case was decided by a full bench (five judges), and one of the judges dissented. The Brown Case was decided by a full bench also, without any dissent. Of course, the last decision must prevail, unless and until overruled, as the first has been." It may be observed, however, that the law declared invalid in the Miller Case was amended so as to provide for a trial without jury only when the accused elected to be so tried, and it was the law as amended which was before the court in the Brown Case.

Of the constitutional amendment adopted in consequence of the decision in the Miller Case, Judge Burks, in the same note, speaks

as follows: "That amendment, in disregard of the principles of Magna Charta embodied in our Bill of Rights, drawn by the illustrious George Mason more than a century ago, invests the legislature with the power to dispense with jury trials in all criminal offences 'not punishable by death or confinement in the penitentiary.' . . . The late constitutional amendment is a step backwards. It was not discussed by the public speakers in the canvass, so far as we ever heard, and the people did not take in its scope and bearing. If they had done so, it is believed, they would have rejected it with something approaching unanimity. The only argument we ever heard in favor of the amendment was, that, by dispensing with jury trials in the cases covered by the amendment, the State would be relieved of great expense. If the matter of dollars and cents is to remand personal security to the rear, then, God save the Commonwealth! The great burden on the State of 'criminal expenses,' of which we hear such hue and cry, is not chargeable in any objectionable degree to the law, but mainly to its administration. Correct the administration and the alleged evil will, for the most part, disappear."

The right to a trial by jury is a privilege which may be waived. The presence of a jury, where the right to a jury trial exists, is not a jurisdictional fact, without which a court is not duly organized for trial in a criminal case. Brown v. Epps, *supra*.

A change of venue, or the summoning of a jury from a distance, in certain cases as prescribed by statute, does not violate the provision for a jury from the vicinage of the accused. The vicinage of a convict in the penitentiary, if he can be said to have any vicinage, is within the walls of the penitentiary, which, if not literally and actually, yet in the eye of the law surround him wherever he may go until he is lawfully discharged. The provisions of the Bill of Rights, however, were made for freemen, and not for convicted felons, who are subject to such laws and regulations as the State may choose to prescribe. Ruffin's Case, 21 Gratt. 790. In this case a convict, while in Bath county with other convicts, under a contract to work on a railroad, in attempting to escape, killed a guard, and it was held that he was lawfully tried and convicted in the Circuit Court of Richmond.

Speedy Trial.—"Speedy" does not mean immediate, but without undue delay, by which is not meant the delay necessarily incident to proceedings conducted according to prescribed forms, but unnecessary delay in taking the successive steps in such proceedings. Brown v. Epps, 91 Va. 726. The legislative interpretation of what is meant by a speedy trial is shown by the statute providing that a prisoner charged with a felony, who, without legal cause, has been denied a trial for three regular terms of the circuit, or four of the county, corporation or hustings court, shall be forever discharged; and this interpretation has several times received the sanction of the Supreme Court of Appeals. The rule is subject to the exceptions enumerated in the statute and to others of similar nature. Adcock's Case, 8 Gratt. 661; Brown v. Epps, *supra;* Nicholas v. Commonwealth, 91 Va. 941; and Wadley v. Commonwealth, 2 Va. S. C. Rep. 197. In Benton v. Commonwealth, 90 Va. 328, it was held that when the prisoner was ready and demanded trial, a continuance against his objection from the February to the March term following, to await the discharge of a witness for the Commonwealth who was then in jail and incompetent to testify, was a denial of the right to a speedy trial, and the judgment of the lower court was therefore reversed, Lewis, P., and Lacy, J., dissenting. A reversal for this cause does not discharge the prisoner; it merely gives him the right to a new trial. Benton v. Commonwealth, 91 Va. 782. Benton's case was three times before the Court of Appeals.

Self-Incriminating Evidence.—The object of the provision that no man shall be "compelled to give evidence against himself," is to prevent inquisitorial proceedings to establish guilt. It applies not only when the person called on to testify is himself on trial, but in all other cases; and he may refuse to testify, notwithstanding it is provided by statute that no statement made by him shall be used in any prosecution against him. Cullen's Case, 24 Gratt. 624. Nor can he be required to waive his right by any suggestion or promise that he shall not be prosecuted; nor is his right affected by the fact that he has previously testified before the grand jury. Temple's Case, 75 Va. 892. But in Kendrick's

Case, 78 Va. 490, it was decided by a divided court, Lacy and Richardson, JJ., dissenting, that where complete immunity is given by statute, a witness may be compelled to testify, although his evidence, but for the statute, would tend to incriminate him.

11. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

"Punishment" was substituted by the framers of the present Constitution for "punishments," which was the original form, and had been retained at all previous revisions. In its original form this section was an exact copy of Article 10 of the English Bill of Rights, 1689. See also Amendment VIII. U. S. Constitution.

The imposition and regulation of fines is within the discretion of the legislature, and its discretion will not be questioned by the courts except where the minimum penalty is so excessive as to shock the sense of mankind. The fact that no maximum is fixed does not make an act providing for a fine unconstitutional. So. Express Co. v. Walker, 92 Va. 59.

12. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

13. That in controversies respecting property, and in suits between man and man, the trial by jury is preferable to any other, and ought to be held sacred.

The words "of twelve men," inserted at the revision of 1851 and retained at the revision of 1864, were stricken out by the framers of the present Constitution and the original form restored.

The right of courts of equity to settle matters in controversy, which were within their jurisdiction, as established when the Constitution was adopted, is not in conflict with this section. Pillow v. Southwest &c. Co., 92 Va. 144; Williams v. Newman, 93 Va. 719.

14. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments, and any citizen may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

All of this section after "governments" was inserted by the framers of the present Constitution.

A tax imposed on the business of publishing a newspaper is not an abridgment of the freedom of the press. Norfolk v. Norfolk Landmark Co., 95 Va. 564. An act making it unlawful for office-holders to participate actively in politics by making political speeches, or otherwise, abridges freedom of speech, and is void. Louthan v. Commonwealth, 79 Va. 196. Lewis, P., dissented, and Hinton, J., reserved his opinion.

15. That a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty, and that in all cases the military should be under strict subordination to, and governed by, the civil power.

16. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia ought to be erected or established within the limits thereof.

17. That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance and virtue, and by a frequent recurrence to fundamental principles.

The word "frugality," which in the original followed immediately after "temperance," was omitted by the framers of the present Constitution.

18. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion according to the dictates of conscience; and that it is the mutual duty of all to practice christian forbearance, love and charity towards each other.

19. That neither slavery nor involuntary servitude, except as lawful imprisonment may constitute such, shall exist within this state.

This and the two sections following were inserted by the Convention which framed the present Constitution.

This section is modelled on Amendment XIII. U. S. Constitution, which is as follows: "Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

20. That all citizens of the state are hereby declared to possess equal civil and political rights.

See note on foregoing section.

Compare Amendments XIV. and XV., U. S. Const.; but it should be noted that when the present Constitution was framed these Amendments had not been adopted.

This provision applies to office-holders as well as to private citizens, and in Louthan v. Commonwealth, 79 Va. 196, an act forbidding certain State officers to participate actively in politics was held to be in conflict with it, Lewis, P., dissenting, and Hinton, J., reserving his opinion. In Black v. Trower, 79 Va. 123, an act prescribing that members of electoral boards should be freeholders was held to be invalid on the ground that it violated this provision by discriminating in favor of one class of citizens against other classes. Hinton, J., dissented.

21. The rights enumerated in this bill of rights shall not be construed to limit other rights of the people not therein expressed.

The declaration of the political rights and privileges of the inhabitants of this state is hereby declared to be a part of the constitution of this commonwealth, and shall not be violated on any pretence whatever.

See note on section 19.

The Bill of Rights, though incorporated into and made a part of the present Constitution, has the same force and authority which it has always had, neither more nor less, as containing the recognized fundamental principles of a well-regulated government. Ruffin's Case, 21 Gratt. 790.

ARTICLE II.

DIVISION OF POWERS.

The legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the power of more than one of them at the same time, except as hereinafter provided.

This Article to the word "except" is the same in all the Constitutions. In the first two Constitutions the exception was "that the justices of the county courts shall be eligible to either House of the Assembly;" and in the Constitutions of 1851 and 1864, "that the justices of the peace shall be eligible to either House of the Assembly." A much more useful and important exception is made by the present Constitution in the provision for an executive veto on legislation.

In General.—The division of powers provided for by this Article and by section 7 of the Bill of Rights extends to the local governments by the counties and corporate bodies as well as to the general State government. Burch v. Hardwicke, 23 Gratt. 51. It operates to restrain each of the departments from the exercise of powers properly belonging to either of the others, and secures to each its independence and integrity as a separate coördinate department. The division of powers is maintained, and each department restricted to its appropriate sphere by the restraint which each may exercise on the action of the others.

The Legislature and the Other Departments.—The legislature can do no act of a judicial nature, such, for example, as empowering courts to review decisions of other courts in cases not covered by the general law; or authorizing a new trial to be granted—Martin v. South Salem Land Co., 94 Va. 28; or granting a right of appeal where it has been lost by lapse of time. The proviso of the Enabling Act of March 5, 1870, authorizing the Court of Appeals, when it was first organized under the present Constitution, to rehear and affirm or reverse decrees made by the judges of the Military Court of Appeals at the term commencing January 11, 1870, was an act of this character—Griffin v. Cunningham, 20 Gratt. 31; and so was the act of March 25, 1873, amending the act of March 3, 1866, in so far as it authorized the courts to reopen judgments, and scale the amount according to the depreciation of Confederate money—Ratcliffe v. Carter, 31 Gratt. 105; Marpole v. Cather, 78 Va. 239; and Marshall v. Cheatham, 88 Va. 31. See also Roberts v. Cocke, 28 Gratt. 207; Cecil v. Deyerle, Id. 775; Kent v. Kent, Id. 840; and Pretlow v. Bailey, 29 Gratt. 212.

Nor can the legislature take away from the courts any of the powers essential to courts, or materially impair those powers under the guise of regulating them. Among these essential powers is the power of self-defence and self-preservation by punishment for contempt, and the courts created by the Constitution have the right to exercise this power for themselves, without the intervention of a jury. This power is inherent in such courts, being con-

ferred upon them by the Constitution in the very act of their creation; and it cannot be taken away from them. Carter's Case, 96 Va. 791; Trimble's Case, 96 Va. 818.

Neither can the legislature trench upon the power and prerogative of the executive. When a bill has been passed by the legislature, and presented to the Governor, as required by the Constitution, it cannot be recalled by a joint resolution, and the Governor thereby prevented from discharging his constitutional duty, which is either to approve or disapprove the bill, or allow it to become a law without his approval. Wolfe v. McCaull, 76 Va. 876.

On the other hand, the other departments cannot interfere with the legislature in the exercise of its legitimate functions. The journals of the legislature, for example, import absolute verity, and when they show that an act has been passed by the requisite vote it is not competent for a court to investigate their accuracy. Wise v. Bigger, 79 Va. 269.

The legislature, also, cannot by its own action deprive itself of its constitutional powers; but it is well settled that it may delegate the power of legislation for local purposes to the local agencies of government. It may also authorize a *referendum*, or submit a matter of local concern to the decision or approval of the county courts. In Savage's Case, 84 Va. 619, the validity of the local option law was affirmed; and in *Ex parte* Bassitt, 90 Va. 679, a law authorizing the county court to determine whether an additional justice should be appointed for a particular locality was sustained.

The Courts.—The courts have no power to make laws, though inevitably, in interpreting and applying them, or extending them by construction, or in giving effect to general principles not embodied in legislative enactments, they do, and must, make a great deal of law. This power depends on the rule of *stare decisis*, whereby decisions become authoritative as precedents for the decision of other cases. Apart from this power, which has been of the greatest importance in the development of our municipal law, the true function of the courts is merely to declare the law as

it is, and apply it to particular cases, in passing on the rights of individuals.

Questions in their nature political, or which by the Constitution and laws are submitted to the executive, cannot be determined by the courts. Burch v. Hardwicke, 23 Gratt. 51. In this case it was held that the mayor of a city, in investigating charges against the chief of police, acts as the chief executive officer of the city, and not as a court; and that he is not subject to the superintendence of the courts, and cannot be restrained by a writ of prohibition from proceeding with the investigation.

ARTICLE III.

ELECTIVE FRANCHISE AND QUALIFICATIONS FOR OFFICE.

SEC. 1. Every male citizen of the United States, twenty-one years old, who shall have been a resident of this state twelve months, and of the county, city, or town in which he shall offer to vote three months next preceding any election, shall be entitled to vote for members of the general assembly and all officers elected by the people: provided that no officer, soldier, seaman, or marine of the United States army or navy shall be considered a resident of this state by reason of being stationed therein: and provided, also, that the following persons shall be excluded from voting:

First. Idiots and lunatics.

Second. Persons convicted of bribery in any election, embezzlement of public funds, treason, felony, or petit larceny.

Third. No person who, while a citizen of this state, has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this state, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to vote or hold any office of honor, profit, or trust under this constitution.

Amendment adopted in 1882, amending the amendment of 1876 by striking out the words "and shall have paid to the state, before the day of election, the capitation tax required by law for the preceding year," which immediately preceded the words "shall be entitled to vote," and re-adopting it without further change. Acts 1879–80, p. 296, and Acts 1880–81, pp. 79 and 213. The amendment of 1876 changed the original by inserting the provision requiring the pre-payment of the capitation tax, and by substituting after the words "shall be entitled to vote" the words "for members of the general assembly and all officers elected by

the people," instead of the words "upon all questions submitted to the people at such election." Acts 1874–75, p. 200, and Acts 1875–76, p. 82.

Persons Qualified to Vote under the several Constitutions.—The first constitution provided "that the right of suffrage in the election of members of both houses shall remain as exercised at present," by which provision the right was given only to freeholders (see Acts 1785, chap. 35, sec. 2, as to the holding required). By the Constitution of 1830 the right was given not only to freeholders, as before, but to reversioners and remaindermen of freehold estates, and lease-holders for a term of not less than five years, of the annual value of $20, and house-keepers and heads of families qualified by a residence of twelve months, and assessed with and paying taxes. By the Constitution of 1851 all property qualifications were abolished; and by that and the subsequent constitutions all white males, and by the present Constitution all males without regard to color, if qualified by age and residence, and not specially excluded, are given the right to vote; except that by the Constitution of 1864 the payment of all taxes assessed after the reorganization under that constitution was made a prerequisite of the right, and by an amendment of the present Constitution adopted in 1876 and repealed in 1882, the prepayment of the capitation tax was required.

The voters have always been required to be twenty-one years of age and residents of the state. By the Constitution of 1830 voters qualified by reason of being house-keepers and heads of families and tax-payers were required to have a residence of one year in the county, city, town, borough, or election district in which they offered to vote. A residence of two years in the state, and of one year in the county, city or town was required by the Constitution of 1851; of one year in the state and six months in the county, city or town by the Constitution of 1864; and of one year in the state and three months in the county, city or town by the present Constitution, both as adopted and as amended.

Persons Disqualified under the several Constitutions.—By the Constitution of 1830 the right of suffrage was denied to any person of unsound mind, any pauper, or any non-commissioned officer, soldier, seaman, or marine in the service of the United States, or any person convicted of any infamous offense. The same classes were excluded by the Constitution of 1851, and, in addition, all persons convicted of bribery at an election. By the Constitution of 1864 the same classes were excluded, except that citizens of the State in the military service of the United States were permitted to vote, wherever stationed, under such regulations as might be prescribed by the legislature; and a test oath was prescribed, the effect of which was to disfranchise all persons who had voluntarily given aid "to those in rebellion against the government of the United States;" but the legislature was empowered to restore persons so disfranchised to the rights of voters, when in its opinion it would be safe to do so. A provision that no person should vote or hold office, who had held office under the Confederate government, or had been a member of the Confederate Congress, or had held office under the State government of any of the Confederate States, county officers excepted, or had been a member of the legislature of any of those States, was contained in this Constitution as adopted, but it was stricken out by amendment December 9, 1865. Acts Extra Session, June, 1865, p. 3, and Acts 1865–66, p. 197. By additional amendment the provision for a test oath was stricken out. Acts 1865–66, p. 226.

The persons excluded by the present Constitution, as adopted, were idiots and lunatics, persons convicted of bribery in any election, embezzlement of public funds, treason or felony, and all persons who since the adoption of the Constitution, being citizens of the State, have participated in a duel with deadly weapons, either as principals or otherwise, or sent or accepted a challenge to fight such a duel, and the latter class are excluded also from the right to hold office. By amendment adopted in 1876 persons convicted of petty larceny were added to the list. Paupers, who were excluded by the Constitutions of 1830, 1851 and 1864, are not excluded by the present Constitution.

Disfranchisement Clause.—This section, as framed by the Convention, contained a fourth clause, which excluded another class from the right to vote, but this clause was voted on separately and rejected. It was as follows:

"Every person who has been a senator or representative in Congress, or elector of president or vice-president, or who held any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

"This clause shall include the following officers: governor, lieutenant-governor, secretary of state, auditor of public accounts, second auditor, register of the land office, state treasurer, attorney-general, sheriffs, sergeants of a city or town, commissioner of the revenue, county surveyors, constables, overseers of the poor, commissioner of the board of public works, judges of the supreme court, judges of the circuit court, judges of the court of hustings, justices of the county courts, mayor, recorder, aldermen, councilmen of a city or town, coroners, escheators, inspectors of tobacco, flour, &c., clerks of the supreme, district, circuit, and county courts, and of the court of hustings, and attorneys for the commonwealth: provided, that the legislature may, by a vote of three-fifths of both houses, remove the disabilities incurred by this clause from any person included therein by a separate vote in each case."

Extent of the Right.—Under the first two constitutions the right extended merely to the election of members of the Assembly, but after the adoption of the Federal Constitution it was extended by the terms of that constitution to the election of members of Congress. The extent of the right, as defined by the Constitutions of 1851 and 1864, was "to vote for members of the general assembly and all officers elective by the people;" and under the present Constitution, as adopted, "to vote upon all questions submitted to the people" at any election, but by amendment of 1876 the right was restored as it had been, so as to extend only to voting "for members of the general assembly and all officers elected by the people." To this extent the right of suffrage cannot be abridged, but in submitting other questions than the election of officers, such as the question of city or county subscriptions for internal improvements, to a popular vote, the legislature may require qualifications for the voters in addition to those prescribed by the Constitution.

Legislative Regulations.—The right of suffrage is derived from the Constitution, and cannot be limited or restricted in any other manner than the Constitution provides; and any attempt to do so, openly or covertly, directly or indirectly, is void. The sole function of the legislature, in respect to the exercise of this right, is to provide the mode in which those entitled to vote may do so and have their votes counted, and to guard against improper, illegal, or fraudulent voting. To this end the legislature may adopt and enforce reasonable rules and regulations, to secure the one and prevent the other. It cannot, under cover of a law to regulate voting, introduce any provision, which virtually establishes an educational test, or any other test, in addition to those prescribed by the Constitution. But a law, the general scheme of which is to secure the independence of the voter, by secluding him within an isolated booth, surrounded by a neutral zone, from which all are excluded except the voter and the officers conducting the election, is not objectionable on this ground, if adequate provision is made to enable the blind and illiterate to cast their votes. Pearson v. Supervisors, 91 Va. 322.

The Anti-Duelling Clause.—This clause is self-executing, and the disability to vote or hold office imposed by it does not depend upon conviction in a criminal prosecution, but attaches upon the commission of the offence. Royal v. Thomas, 28 Gratt. 130.

No previous constitution contained an anti-duelling clause, which of itself imposed a disability either to vote or hold office, but the Constitutions of 1830, 1851 and 1864 contained the following provision:

"The legislature may provide by law that no person shall be capable of holding or being elected to any post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of this commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been a second in such duel, or bearer of such challenge or acceptance." Const. 1830, Art. III., sec. 12; Consts. 1851 and 1864, Art. IV., sec. 17.

SEC. 2. All elections shall be by ballot, and all persons entitled to vote shall be eligible to any office within the gift of the people, except as restricted in this constitution.

This section was new, except that the Constitution of 1864 provided that elections for members of the General Assembly and other State officers should be by ballot. The Constitutions of 1830 and 1850 provided that in all elections votes should be given openly, or *viva voce*, and not by ballot, except that under the latter constitution a dumb person might vote by ballot.

Elections and Popular Government.—"The people are with us the source of all power and honor. Their will is expressed by elections by ballot. It is for them to see to it that the agencies employed to collect their will are kept free from all taint of fraud and corruption, and, as far as may be, from the suspicion of it. It is idle to hope for honest officials and honest government as the result of dishonest elections. It will be as well to expect 'an evil tree to bring forth good fruit.' If fraud is permitted in elections, or if the laws under which elections are held do not make its perpetration both difficult and dangerous, honest men will be excluded from all participation in affairs, while those who have by corrupt practices come into power will not be slow amply to indemnify themselves by peculation for all that their success may have cost." Keith, P., in Pearson v. Supervisors, 91 Va. 322.

Secrecy of the Ballot.—A vote by ballot *ex vi termini* implies a secret ballot. The secrecy of the ballot is a right which inheres in the voter, and of which he cannot lawfully be deprived against his will. But the primary right is the right to vote, and this right must not be defeated by too rigid an observance of the incidental right of secrecy. A provision that blind and illiterate voters shall be assisted by an officer designated for that purpose does not violate the right to a secret ballot. Pearson v. Supervisors, *supra*.

The Right of Suffrage and Eligibility to Office.—By this section all persons entitled to vote are made eligible to office, and the words "any office within the gift of the people" include any office, whether filled by popular vote or otherwise. An act providing that members of electoral boards shall be freeholders violates this

provision. Black v. Trower, 79 Va. 123. In this case it is said that the right to vote and eligibility to office are made coextensive, from which it might be inferred that no person is eligible to office except one who has the right to vote. Such an inference, however, is not sustained by the language of the provision, which upon a fair interpretation merely means that no person entitled to vote shall be excluded from the right to hold office; and the question as to whether others shall be eligible to office is left to the discretion of the legislature. The provision was doubtless inserted for the purpose of preventing the passage of any law making negroes ineligible to office.

SEC. 3. All persons entitled to vote and hold office, and none others, shall be eligible to sit as jurors.

This was a new section.

This section does not operate *proprio vigore*, and further legislation was necessary to give it effect; in consequence of which, as well as by force and effect of the second and fourth sections of the schedule, existing laws governing the constitution of juries were continued in force, and a grand jury constituted according to those laws could not be objected to on the ground that it was composed of freeholders. Chahoon's Case, 20 Gratt. 733; Sand's Case, 20 Gratt. 800.

All persons entitled to vote and hold office under the State Constitution are by this section made eligible as jurors, and their competency as jurors is not affected by a disability to vote or hold office imposed by the Federal Constitution. Sand's Case, 21 Gratt. 871.

SEC. 4. No voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger, to work upon public roads, or to attend any court as suitor, juror, or witness; and no voter shall be subject to arrest under any civil process during his attendance at elections, or in going to or returning from them.

The same as Article III., sec. 3, of the Constitutions of 1851 and 1864.

Section 4 of the Constitution as adopted was stricken out by amendment in 1876. It was as follows:

"The general assembly shall, at its first session under this constitution, enact a general registration law; and every person offering or applying to register shall take and subscribe, before the officer charged with making a registration of voters, the following oath:

"I, ————————, do solemnly swear (or affirm) that I am not disqualified from exercising the right of suffrage by the constitution framed by the convention which assembled in the city of Richmond on the third day of December, 1867, and that I will support and defend the same to the best of my ability."

Oath of Office.

SEC. 5. All persons, before entering upon the discharge of any function as officers of this state, must take and subscribe the following oath or affirmation:

"I, ————————, do solemnly swear (or affirm) that I will support and maintain the constitution and laws of the United States and the constitution and laws of the State of Virginia; that I recognize and accept the civil and political equality of all men before the law, and that I will faithfully perform the duty of————to the best of my ability: So help me God."

This is section 6 of the Constitution as adopted. An oath of office was prescribed by the Constitution of 1864, Article III. sec. 1, but by no previous constitution.

School trustees are officers within the meaning of this section, and if they fail to take the oath required by it within the prescribed time, their offices become vacant. Childrey v. Rady, 77 Va. 518. See also Branham v. Long, 78 Va. 352.

Test Oath.—This article, as framed by the Convention, contained an additional section, section 7, which was voted on separately and rejected. It was as follows:

"In addition to the foregoing oath of office, the governor, lieutenant-governor, members of the general assembly, secretary of state, auditor of public accounts, state treasurer, attorney-general, and all persons elected to any convention to frame a constitution for this state, or to amend or revise this constitution in any manner, and mayor and council of any city or town, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation, provided the disabilities therein contained may be individually removed by a three-fifths vote of the general assembly: 'I, ——, do solemnly swear (or affirm), that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel or encouragement, to persons engaged in armed hostility thereto; that I have never sought nor accepted, nor attempted, to exercise the functions of any office whatever, under any authority or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution, within the United States, hostile or inimical thereto. And I do further swear (or

affirm), that, to the best of my knowledge and ability, I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.' The above oath shall also be taken by all the city and county officers before entering upon their duties, and by all other state officers not included in the above provision." See Code of 1873, page 27.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Governor.

SEC. 1. The chief executive power of this commonwealth shall be vested in a governor. He shall hold office for a term of four years, to commence on the first day of January next succeeding his election, and be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

The same as Article V. sec. 1, Constitutions 1851 and 1864, except that in those constitutions the words "term of four years" were preceded by "the" instead of "a." The term of office under the Constitution of 1776 was one year, and the governor was eligible for three successive terms, but after going out of office he was not eligible until the expiration of four years. By the constitution of 1830 his term was enlarged to three years, and he was made ineligible for the next succeeding term.

In the Constitutions of 1830, 1851 and 1864 the article on the Executive Department followed instead of preceding that on the Legislative Department.

SEC. 2. The governor shall be elected by the voters at the times and places of choosing members of the general assembly. Returns of elections shall be transmitted, under seal, by the proper officers to the secretary of the commonwealth, who shall deliver them to the Speaker of the House of Delegates on the first day of the next session of the general assembly. The Speaker of the House of Delegates shall, within one week thereafter, in presence of a majority of the Senate and House of Delegates, open the said returns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen governor by the joint vote of the two houses of the general assembly. Contested elections for governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

Same as Article V., sec. 2, Constitutions 1851 and 1864, except

"the" omitted before "elections" in the second sentence, and before "presence" in the third sentence.

Popular elections for governor were first required by the Constitution of 1851. Under the two preceding constitutions the governor was elected by the joint vote of the two Houses of the General Assembly.

SEC. 3. No person except a citizen of the United States shall be eligible to the office of governor; and if such person be of foreign birth, he must have been a citizen of the United States for ten years next preceding his election; nor shall any person be eligible to that office unless he shall have attained the age of thirty years, and have been a resident of this state for three years next preceding his election.

By the first constitution no qualifications for governor were prescribed. By the Constitutions of 1830, 1851 and 1864 it was provided that no person should be eligible unless he had attained the age of thirty years, was a native citizen of the United States, and had been a citizen of the State for five years next preceding his election; but, under the Constitution of 1830, a foreign-born citizen, otherwise qualified, was eligible if he had been a citizen of the United States at the time of the adoption of the Federal Constitution.

SEC. 4. The governor shall reside at the seat of government; shall receive five thousand dollars for each year of his service, and while in office shall receive no other emolument from this or any other government.

Same as Article V., sec. 4, Constitutions of 1851 and 1864, except "services" in those constitutions instead of "service." The Constitution of 1776 provided for "an adequate, but moderate salary;" and the Constitution of 1830 provided that the governor should receive a compensation, to be fixed by law, which should be neither increased nor diminished during his term of office. Neither of the first two constitutions required that the governor should reside at the seat of government.

SEC. 5. He shall take care that the laws be faithfully executed; communicate to the general assembly at every session the condition of the commonwealth; recommend to their consideration such measures as he may deem expedient, and convene the general assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the commonwealth may require it. He shall be commander-in-chief of the land and naval forces of

the state; have power to embody the militia to repel invasion, suppress insurrection, and enforce the execution of the laws; conduct, either in person or in such other manner as shall be prescribed by law, all intercourse with other and foreign states; and during the recess of the general assembly, to fill, *pro tempore*, all vacancies in those offices for which the constitution and laws make no provision; but his appointments to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the next session of the general assembly. He shall have power to remit fines and penalties in such cases and under such rules and regulations as may be prescribed by law, and except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; to remove political disabilities consequent upon conviction for offences committed prior or subsequent to the adoption of this constitution, and to commute capital punishment; but he shall communicate to the general assembly, at each session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.

Same as Article V., sec. 5, Constitutions of 1851 and 1864, except that the governor is given the additional power "to remove political disabilities consequent upon conviction for offences committed prior or subsequent to the adoption of this Constitution"; and his power to grant reprieves and pardons and to commute capital punishment was protected against legislative interference by omitting the provision giving the legislature the power to prohibit its exercise.

Pardoning Power.—A pardon cannot be granted until after conviction, but by conviction is meant the finding of the jury, and a pardon may be granted after the jury returns a verdict of guilty and before sentence is pronounced. Blair's Case, 25 Gratt. 850.

Under this section the governor may grant a conditional pardon, and while such a pardon is materially different from a commutation of punishment, which is not allowed except in the case of capital punishment, the substitution of a greater for a less punishment, though in effect a commutation, amounts to a conditional pardon if accepted by the convict. Lee v. Murphy, 22 Gratt. 789. A full pardon removes the penal consequences of conviction, and in legal contemplation the offence is blotted out. Accordingly, when a convict who has been pardoned is convicted for a subsequent offence, his pardon in the first case relieves him from the liability to receive additional punishment in the second

case on account of the prior conviction. Edwards' Case, 78 Va. 39. The disability to sit as a juror imposed by conviction for felony is removed by a pardon. Puryear's Case, 83 Va. 51. But a conditional pardon, which merely reduces the punishment, does not operate as a full pardon to restore the competency of the offender. Lee v. Murphy, *supra*.

SEC. 6. He may require information, in writing, from the officers in the executive department upon any subject relating to the duties of their respective offices; and may also require the opinion, in writing, of the attorney-general upon any question of law connected with his duties.

Same as Article V., sec. 6, Constitutions of 1851 and 1864.

SEC. 7. Commissions and grants shall run in the name of the commonwealth of Virginia, and be attested by the governor, with the seal of the commonwealth annexed.

Same as Article V., sec. 7, Constitutions of 1851 and 1864, and the same provision, in slightly different language, occurs also in the Constitutions of 1776 and 1830.

SEC. 8. Every bill which shall have passed the Senate and House of Delegates, and every resolution requiring the assent of both branches of the general assembly, shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If, after such consideration, two-thirds of the members present shall agree to pass the bill or joint resolution, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members present, it shall become a law, notwithstanding the objections of the governor. But in all such cases the votes of both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill or joint resolution shall be entered on the journal of each house respectively. If any bill or resolution shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.

Adapted from Article I., sec. 7, clause 2, U. S. Constitution, of which, except the changes necessarily made in adapting it, it is almost an exact reproduction. There was no similar provision in any of the previous constitutions of the State.

The legislature has no power to recall a bill presented to the

governor under this section, and if, at the request of the legislature, he returns it without disapproving it, it becomes a law. Wolfe v. McCaull, 76 Va. 876. The journals of the houses showing their action on the governor's veto cannot be impeached. Wise v. Bigger, 79 Va. 269.

Lieutenant-Governor.

SEC. 9. A lieutenant-governor shall be elected at the same time and for the same term as the governor, and his qualification and the manner of his election in all respects, shall be the same.

Same as Article V., sec. 8, Constitutions 1851 and 1864.

The separate office of lieutenant-governor was first created by the Constitution of 1851. By the Constitution of 1776 the president of the Privy Council, or Council of State, was designated to act, upon occasion, as lieutenant-governor; and by the Constitution of 1830 it was provided that the senior councillor should be lieutenant-governor.

SEC. 10. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant-governor; and the general assembly shall provide by law for the discharge of the executive functions in other necessary cases.

Same as Article V., sec. 9, Constitutions 1851 and 1864.

SEC. 11. The lieutenant-governor shall be President of the Senate, but shall have no vote except in case of an equal division; and while acting as such shall receive a compensation equal to that allowed to the Speaker of the House of Delegates.

Same as Article V., sec. 10, Constitutions 1851 and 1864, except that after the words "shall have no vote" were inserted the words "except in case of an equal division."

Secretary of the Commonwealth, Treasurer and Auditor.

SEC. 12. A secretary of the commonwealth, treasurer, and auditor of public accounts shall be elected by the joint vote of the two houses of the general assembly, and continue in office for the term of two years, unless sooner relieved. The salary of each shall be determined by law.

Same as Article V., sec. 11, Constitutions 1851 and 1864, except that "relieved" was substituted for "removed," and the provision in regard to salary was added.

The power of the legislature to determine the salaries of these officers is not limited in respect to the time of its exercise, and their salaries may be reduced at any time during their term of office. Field v. Auditor, 83 Va. 882.

SEC. 13. The secretary shall keep a record of the official acts of the governor, which shall be signed by the governor and attested by the secretary; and when required, he shall lay the same, and any papers, minutes, and vouchers pertaining to his office, before either house of the general assembly; and shall perform such other duties as may be prescribed by law. All fees received by the secretary shall be paid into the treasury.

Same as Article V., sec. 12, Constitutions 1851 and 1864, except that the last sentence was added.

SEC. 14. The powers and duties of the treasurer and auditor shall be such as are now or may hereafter be prescribed by law.

Same as Article V., sec. 13, Constitutions 1851 and 1864.

SEC. 15. There may be established in the office of the secretary of state a bureau of statistics, and a bureau of agricultural chemistry and geology, under such regulations as may be prescribed by law.

A new section.

SEC. 16. The general assembly shall have power to establish a bureau of agriculture and immigration under such regulations as may be prescribed.

A new section.

Board of Public Works.

SEC. 17. There shall be a board of public works, to consist of the governor, auditor, and treasurer of the commonwealth, under such regulations as may be prescribed by law.

A board of public works was created by statute as far back as February 5, 1816. It was made a constitutional board by the Constitution of 1851, to consist of three commissioners, one to be elected by the voters of each of three districts, into which the State should be divided for the purpose, and its organization was to be provided for by the General Assembly. The Constitution of 1864 contained the same provisions without material change. Article V., secs. 14, 15, 16, 17 and 18, Constitutions 1851 and 1864.

The board of public works of the present Constitution, though differently constituted, is the same board which previously ex-

isted, invested with the same rights and powers, and subject to the same regulations so far as they have not been changed by law. It is a corporate body, capable of suing and being sued, and may be held liable on a contract made with the board as organized under former constitutions and laws. Kelly v. Board of Public Works, 25 Gratt. 755.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

SEC. 1. The legislative power of this commonwealth shall be vested in a general assembly, which shall consist of a Senate and House of Delegates.

Same as Article IV., sec. 1, Constitution 1864. In the Constitutions of 1830 and 1851 the corresponding provision was: "The legislature shall be formed of two distinct branches, which together shall be a complete legislature, and shall be called the General Assembly of Virginia," and the provision in the Constitution of 1776 was similar to this. In its present form this section is modeled on Article I., sec. 1, U. S. Constitution.

Extent of Legislative Power.—The legislature has plenary legislative power, except where it is restricted by the Constitution of the State or of the United States. Its acts are always presumed to be valid, and, however unwise or vicious they may be, they cannot be declared to be invalid unless they are plainly in conflict with the organic law. In a doubtful case, if an act is susceptible of more than one construction, that one will be preferred which will make the act valid; and, where part of an act is unconstitutional, effect will nevertheless be given to the legislative intent as far as possible, and the other provisions of the act will not be declared void, unless the purpose of the act was to accomplish a single object, or its provisions are so connected and so dependent on each other that it cannot be presumed that the legislature would have enacted the one without the other. Miller v. Commonwealth, 88 Va. 618; Brown v. Epps, 91 Va. 756; Iverson Brown's Case, 91 Va. 762; Prison Association v. Ashby, 93 Va. 670; Robertson v. Preston, 97 Va. 296; Martin v. South Salem Land Co., 97 Va. 349.

Power of Taxation.—The power of taxation resides in the

legislature, as incident to its legislative power, and is full, absolute and unlimited, except so far as it is restrained by the Constitution of the United States or of the State. Eyre v. Jacob, 14 Gratt. 422; Commonwealth v. Moore, 25 Gratt. 951; Helfrick's Case, 29 Gratt. 844.

Power of Eminent Domain.—The power of eminent domain is an incident of sovereignty. It is vested in the legislature, which is clothed with exclusive authority to determine when the necessity for its exercise exists; and it can be set in motion only by virtue of legislative enactment, by which the time, manner and occasion of its exercise are directed and controlled, subject only to the constitutional limitation that private property cannot be taken for public use without the consent of the owner, except upon payment of just compensation. Roanoke v. Berkowitz, 80 Va. 616; Painter v. St. Clair, 2 Va. Sup. Ct. Rep. 115.

Delegation of Power.—That the power of legislation as well as the power of taxation, for local purposes, can be delegated to the local agencies of government is a universally recognized principle. It is equally as well settled that the legislature may exercise the power of eminent domain either directly or indirectly through such agencies as it may select. Painter v. St. Clair, *supra.*

SEC. 2. The House of Delegates shall be elected biennially by the voters of the several cities and counties on the Tuesday succeeding the first Monday in November, and shall from and after the Tuesday succeeding the first Monday in November, eighteen hundred and seventy-nine, consist of not more than one hundred and not less than ninety members.

Amendment 1876, fixing a maximum and minimum limit on the number of delegates. In its original form this section merely distributed and apportioned the delegates among the counties and cities so as to give a total of one hundred and thirty-eight delegates, a number subject to be changed at any subsequent apportionment.

The number of delegates was not limited by the Constitution of 1776. Two delegates were allowed to each county, and one each to certain designated cities and boroughs, and to such others as should afterwards be admitted to representation. By the creation

of new counties and the admission of additional cities and boroughs, the number was so increased that at the time of the revision of 1830 there were two hundred and fourteen delegates. By the Constitution of 1830 the number was reduced to 134, for the apportionment of whom the counties were grouped into four great districts, corresponding with the trans-Alleghany, Valley, Piedmont and Tidewater sections of the State, a certain number being assigned to each district and apportioned among the counties composing it, which number should not be increased or diminished at any re-apportionment. The Constitution of 1851 fixed the number of delegates at 152; and the Constitution of 1864 provided that it should not be less than 80 nor more than 104. The Constitutions of 1851 and 1864 both apportioned the delegates among the counties and cities.

The first two constitutions provide for annual, and all subsequent constitutions for biennial elections of delegates.

SEC. 3. From and after the same date the Senate shall consist of not less than thirty-three nor more than forty members. They shall be elected for the term of four years—for the election of whom the counties, cities, and towns shall be divided into districts. Each county, city, and town of the respective districts shall, at the time of the first election of its delegate or delegates under this amendment, vote for one or more senators. The senators first elected under this amendment in districts bearing odd numbers shall vacate their offices at the end of two years; and those elected in districts bearing even numbers at the end of four years; and vacancies occurring by expiration of term shall be filled by the election of senators for the full term.

Amendment 1876, changing the original by fixing a minimum for the number of members, and omitting the arrangement of the counties into senatorial districts.

The senatorial term, from the beginning, has been four years. The number of senators under the first Constitution was 24; under the second, 32; under the third, 50; under the fourth, 34; under the present Constitution, as adopted, not more than 40, and by the amendment not less than 33, with the same maximum. Under the first two constitutions one-fourth of the senators were elected each year, but under subsequent constitutions one-half every second year.

For the election of senators the counties and cities have always

been grouped into senatorial districts. By the Constitution of 1830 they were so grouped as to give thirteen senators to the districts west, and nineteen to the districts east of the Blue Ridge mountains, with a proviso that these numbers should not be changed at any re-apportionment.

SEC. 4. Any apportionment of senators and members of the House of Delegates shall be made at the regular session of the general assembly next preceding the Tuesday after the first Monday in November, eighteen hundred and seventy-nine, or sooner. A reapportionment shall be made in the year eighteen hundred and ninety-one, and every tenth year thereafter.

Amendment 1876. The original provided that a re-apportionment should be made at the first session after the federal census, and every ten years thereafter.

The first constitution contained no provision for re-apportionment, but, so far as the Senate was concerned, the legislature had the power to effect a re-apportionment by a re-arrangement of the senatorial districts, and in 1817 this power was exercised so as to give representation in the Senate on the basis of the white population as shown by the census of 1810. All the other constitutions contain provisions for re-apportionment for both houses.

Qualifications of Senators and Delegates.

SEC. 5. Any person may be elected senator who, at the time of election, is actually a resident within the district and qualified to vote for members of the general assembly according to this constitution; and any person may be elected a member of the House of Delegates who, at the time of election, is actually a resident within the county, city, town, or election district, qualified to vote for members of the general assembly according to this constitution. But no person holding a salaried office under the state government shall be capable of being elected a member of either house of the general assembly. The removal of any person elected to either branch of the general assembly from the city, county, town, or district for which he was elected shall vacate his office.

Amendment 1876, inserting the provision "but no person holding a salaried office under the state government shall be capable of being elected a member of either house of the general assembly."

The residence qualification for members of the General Assembly has been the same from the beginning, and under all the the constitutions they have been required to be qualified voters.

By the Constitutions of 1776, 1851 and 1864 senators were required to be twenty-five years of age, and by the Constitution of 1830 to be thirty years of age. The age of eligibility to the House of Delegates has always been twenty-one years.

No disqualifications were imposed by the present Constitution, as adopted, but by the amendment of this section persons holding a salaried office under the state government were made ineligible. By all the preceding constitutions all persons holding lucrative offices and all ministers of the Gospel, and by the Constitutions of 1830, 1851 and 1864, all priests of whatever denomination, and by the Constitutions of 1851 and 1864 all salaried officers of any banking corporation or company, and all attorneys for the commonwealth, were disqualified for election to either house.

Powers and Duties of the General Assembly.

SEC. 6. The general assembly shall meet once in two years, and not oftener, unless convened by the governor in the manner prescribed in this constitution. No session of the general assembly, after the first under this amendment, shall continue longer than ninety days without the concurrence of three-fifths of the members elected to each house; in which case the session may be extended for a further period, not exceeding thirty days. Neither house during the session of the general assembly shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. A majority of the members elected to each house shall constitute a quorum to do business; but a smaller number may adjourn from day to-day, and shall have power to compel the attendance of absent members in such manner and under such penalty as each house may prescribe.

Amendment 1876, substituting biennial for annual sessions. As amended this section is the same as Article IV., sec. 8, Constitution 1851, except the word "amendment" for "constitution" in the second sentence. Compare Article I., sec. 5, clauses 1 and 4, U. S. Constitution.

This section as amended and the Constitution of 1851 provide for biennial sessions. Under all the other constitutions, including the present Constitution before amendment, the sessions were annual. A limit on the duration of the sessions was first imposed by the Constitution of 1851, the limit fixed being the same as at present. By the Constitution of 1864 the regular session was limited to sixty days. All the constitutions limiting the sessions

have the same provision for their extension for a further period not exceeding thirty days.

The provisions fixing the quorum, giving a minority the power to adjourn from day to day and to compel the attendance of absentees, and limiting the power of either house to adjourn without the consent of the other, were introduced at the revision of 1830. Under the first constitution either house, without the consent of the other, could adjourn for any time and to any place.

SEC. 7. The House of Delegates shall choose its own Speaker; and in the absence of the lieutenant-governor, or when he shall exercise the office of the governor, the Senate shall choose from their own body a president *pro tempore;* and each house shall appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies; but if vacancies shall occur during the recess of the general assembly, such writs may be issued by the governor, under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members; may punish them for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Same as Article IV., sec. 8, Constitution 1851, and Article IV., sec. 9, Constitution 1864, except the omission of the words "but not a second time for the same offence," which in those constitutions concluded the section. See also Article III, sec. 9, Constitution 1830, and compare Article I., sec. 5, clauses 1 and 2, U. S. Constitution.

Each house, having the power to make rules for its own government, may grant leaves of absence, excuse members from voting, when proper, and recognize what are called *pairs*. Wise v. Bigger, 79 Va. 269.

SEC. 8. The members of the general assembly shall receive for their services a salary, to be ascertained by law and paid out of the public treasury; but no act increasing such salary shall take effect until after the end of the term for which the members of the House of Delegates voting thereon were elected; and no senator or delegate, during the term for which he shall have been elected, shall be appointed to any civil office of profit under the commonwealth which has been created, or the emoluments of which have been increased during such term, except offices filled by election by the people.

Amendent 1876, substituting the word "salary" for "compensation" and making no other change. Before amendment this section was the same as Article IV., sec. 10, Constitutions 1850

and 1864, and, except immaterial verbal differences, the same as Article III., sec. 8, Constitution 1830. Compare Article I., sec. 6, clauses 1 and 2, U. S. Constitution.

This section might with advantage go further and provide that no senator or delegate shall be eligible to any office to be filled by the legislature during the term for which he was elected.

SEC. 9. Bills and resolutions may originate in either of the two houses of the general assembly, to be approved or rejected by either, and may be amended by either house, with the consent of the other.

This section is the same as Article IV., sec. 11, Constitutions 1851 and 1864, except that in those constitutions the words "to be approved or rejected by" were followed by the words "the other" instead of "either."

Under the first two constitutions all laws were required to originate in the House of Delegates, to be approved or rejected by the Senate, or amended with the consent of the House of Delegates; and by the first constitution money bills could not be altered by the Senate, but were required to be wholly approved or rejected. The legislative equality of the two houses was first established by the Constitution of 1851.

SEC. 10. Each house of the general assembly shall keep a journal of its proceedings, which shall be published from time to time; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal. No bill shall become a law until it has been read on three different days of the session in the house in which it originated, unless two-thirds of the members in that house shall otherwise determine.

The same as Article IV., sec. 12, Constitutions 1851 and 1864, except that in those constitutions two-thirds of the members "elected to that house" instead of "in that house," were required to concur in dispensing with the reading of a bill on three different days.

The journals of each house import absolute verity, and it is not competent for the courts to investigate their accuracy. Wise v. Bigger, 79 Va. 269.

The provisions on the subject of legislation, scattered through the Constitution, should for convenience be grouped together.

These provisions are Article IV, sec. 8, Article V, secs. 9, 10 and 15, and Article X, secs. 11 and 16.

SEC. 11. The members of the general assembly shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house they shall not be questioned in any other place. They shall not be subject to arrest, under any civil process, during the session of the general assembly, nor for fifteen days next before the convening and after the termination of each session.

This was a new section, modeled in part on Article I., sec. 6, clause 1, U. S. Constitution.

SEC. 12. The whole number of members to which the State may at any time be entitled in the House of Representatives of the United States shall be apportioned, as nearly as may be, amongst the several counties, cities, and towns of the state according to their population.

This section is the same as Article IV., sec. 13, Constitution 1864. The Constitutions of 1830 and 1851 provided that representatives should be apportioned among the counties, cities and towns of the State according to their respective numbers, which should be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons, conforming to Article I., sec. 3, U. S. Constitution. The Constitution of 1776, ante-dating the Federal Constitution, provided for the election of delegates to the Continental Congress by joint ballot of both Houses of Assembly.

SEC. 13. In the apportionment the state shall be divided into districts corresponding in number with the representatives to which it may be entitled in the House of Representatives of the Congress of the United States, which shall be formed, respectively, of contiguous counties, cities, and towns; be compact, and include, as nearly as may be, an equal number of population.

This section is the same as Article IV., sec. 14, Constitutions 1851 and 1864, except that the Constitution of 1851 provided that the Congressional districts should include as nearly as might be "an equal number of the population upon which is based representation in the House of Representatives of the United States."

The power to lay off Congressional districts is political and discretionary, and is not subject to control by the courts. Wise v. Bigger, 79 Va. 269.

SEC. 14. The privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require it. The general assembly shall not pass any bill of attainder, or any *ex post facto* law, or any law impairing the obligation of contracts, or any law whereby private property shall be taken for public uses without just compensation, or any law abridging the freedom of speech or of the press. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall any man be enforced, restrained, molested, or burthened in his body or goods, or otherwise suffer on account of his religious opinions or belief, but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish, or enlarge their civil capacities. And the general assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this commonwealth to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry, but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

The Constitutions of 1830, 1851 and 1864 forbade the suspension of the privilege of the writ of *habeas corpus* in any case, making no exception; and, in the clause relating to religious freedom, used the word "burdened" instead of "burthened," the latter being the form used in the act from which this clause is taken. Otherwise this section is the same in the Constitutions of 1830, 1851 and 1864, and in the present Constitution, except that in the Constitution of 1830 the word "one" was inserted between "any" and "sect" in the clause forbidding peculiar privileges or advantages being conferred on any sect or denomination.

The first sentence as it now stands is the same as Article I., sec. 9, clause 2, U. S. Constitution. The prohibitions contained in the second sentence are also taken from the Federal Constitution, as follows: That against the passage of any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts from Article I., sec. 10, clause 1; that against the passage of any law taking private property for public uses without just compensation from Amendment V.; and that against the passage of any law abridging the freedom of speech or of the press from Amendment I. The third sentence is taken from the act for establishing religious freedom. See Code 1887, sec. 1394.

Habeas Corpus.—A law giving the circuit court of the city of Richmond exclusive jurisdiction over *habeas corpus* proceedings to test the right of the Prison Association of Virginia to detain persons committed to its custody does not unlawfully abridge the constitutional privilege of such persons. Prison Association v. Ashby, 93 Va. 667.

Ex Post Facto Laws.—The provision against *ex post facto* laws forbids the passage of any law which makes an act criminal which was not so when it was committed, or, if criminal, makes it more highly penal, or reduces the amount, or changes the character, of the evidence necessary to secure a conviction; but the prohibition does not apply to the forms of criminal procedure. A preliminary examination before a justice may be dispensed with, the mode of summoning juries may be changed, or the duty of issuing the *venire facias* may be assigned to a different court without violating this provision. Jones v. Commonwealth, 86 Va. 661; Perry v. Commonwealth, 3 Gratt. 632, and Wilson v. Commonwealth, 86 Va. 666.

Obligation of Contracts.—A city charter is not a contract within the meaning of the prohibition against the passage of any law impairing the obligation of contracts, Richmond v. R. & D. R. R. Co., 21 Gratt. 604; nor is the right of public officers to compensation for their services a contract right, Loving v. Auditor, 76 Va. 196; nor the privilege of conducting a lottery, Justice v. Commonwealth, 81 Va. 209, and Dismal Swamp Canal Co. v. Commonwealth, Id. 220; nor does an act conferring on county supervisors the right to erect a bridge, to be managed by commissioners to be appointed by the county court, contain any of the elements of a contract. Supervisors v. Luck, 80 Va. 223.

Corporate charters, though they constitute contracts, are issued subject to the general laws of the State, and such changes as may be made therein. So an act giving prior liens for supplies on the property of manufacturing corporations is not void as impairing the charter rights of such corporations. Va. Development Co. v. Crozer Iron Co., 90 Va. 126. And the State may reasonably limit the amount of charges by a railroad company for the transporta-

tion of persons and property within its own jurisdiction, unless restrained by some provision in the charter, or unless what is done amounts to a regulation of foreign or interstate commerce. N. & W. R. R. Co. v. Pendleton, 86 Va. 1004.

The rights conferred by corporate charters, or by municipal contracts, as respects the mode of their exercise, are subject to control under the police powers of the State, or of municipal corporations. R. F. & P. R. R. Co. v. Richmond, 26 Gratt. 83; Davenport v. Richmond, 81 Va. 636; Roanoke Gas Co. v. Roanoke, 88 Va. 810; Charlottesville v. So. Ry. Co., 97 Va. 428; Roller v. Harrisonburg, Id. 582; Washington &c. Ry. Co. v. Alexandria, 2 Va. Sup. Ct. Rep. 309.

The obligation of contracts is not impaired by an act scaling debts payable in Confederate money to their gold value, and depriving the creditor of all legal remedy for a greater amount, including the remedy by sale under a deed of trust, Pharis v. Dice, 21 Gratt. 303; Compton v. Major, 30 Gratt. 180; or by an act requiring an officer selling personal property to satisfy a debt contracted before April 10, 1865, to sell on a credit of twelve months at the request of the debtor, Garland v. Brown, 23 Gratt. 173; or by a law authorizing a creditor to compromise with and release any debtor bound jointly with others, without impairing his rights against the other joint contractors or co-obligors, or the right of the joint contractors or co-obligors to contribution among themselves, Yuille's Adm'r v. Wimbish's Adm'r, 77 Va. 308; or by laws changing the remedy, or the forms of actions, or modes of proceeding, or the rules of evidence, if an adequate and efficacious remedy is provided, Garland v. Brown, 23 Gratt. 173; Poindexter v. Greenhow, 84 Va. 441; Commonwealth v. Weller, 82 Va. 721; McGahey v. Commonwealth, 85 Va. 519.

The obligation of contracts is impaired by a law authorizing the courts and juries in suits on contracts made prior to April 10, 1865, to remit interest accrued during the war, and empowering the courts to open and review final judgments on such contracts, and reduce the amount of principal or interest due thereon, Roberts v. Cocke, 28 Gratt. 207; Cecil v. Deyerle, Id. 775; Kent v. Kent, Id. 840; Pretlow v. Bailey, 29 Gratt. 212; Rat-

cliffe v. Anderson, 31 Gratt. 105; Marpole v. Cather, 78 Va. 239; Marshall v. Cheatham, 88 Va. 31; or by a law authorizing debts to be paid at a place different from that agreed on, to an agent not appointed by the creditor, and in a depreciated currency not in circulation at the agreed place of payment, Bank of Old Dominion v. McVeigh, 20 Gratt. 457; or by an act authorizing a majority of a religious congregation, in the event of a division, to transfer the church property contrary to the terms of the trust under which it is held, Finley v. Brent, 87 Va. 103; or by a law allowing exemptions which were not allowed when the contract was made. Homestead Exemption Cases, 22 Gratt. 266.

The Coupon Cases.—In a notable series of cases it was held that the Funding Act of March 30, 1871, created an inviolable contract between the State and its creditors who accepted bonds issued under that act, and that the contract, as to the interest coupons attached to the bonds, was self-executing, said coupons being by the terms of the act receivable for all taxes, debts and demands due the State. Antoni v. Wright, 22 Gratt. 833, in which the act of March 7, 1872, requiring all taxes and demands due the State to be paid in money, was declared void; Clarke v. Tyler, 30 Gratt. 147; Williamson v. Massey, 33 Gratt. 237. All these cases were decided by three judges, Moncure, P., not sitting, and Staples, J., dissenting, and in the first two cases filing strong dissenting opinions. The coupons being thus held to be beyond the reach of direct legislation, a painful struggle followed between the State and its creditors, in the course of which act after act was passed for the purpose of securing adequate revenues to the State by making it difficult and expensive to use coupons in the payment of taxes, &c., and these acts, as often as they came before the Court of Appeals, were declared to be constitutional. Commonwealth v. Maury, 82 Va. 883; Commonwealth v. Larkin, 84 Va. 517; Commonwealth v. Plunkett, Id. 519; Commonwealth v. Krise, Id. 521; in which a law requiring a special license tax of $1,000 on the privilege of selling coupons, and imposing a tax of twenty per cent. on the face value of the coupons when sold, was sustained; Poindexter v. Greenhow, 84 Va. 441, in

which it was held competent for the legislature to take away from coupon holders their remedy by *mandamus;* and Commonwealth v. Weller, 82 Va. 721, and McGahey v. Commonwealth, 85 Va. 519, in which a law making expert testimony inadmissible to prove the genuineness of coupons was held valid. In Maury v. Commonwealth, 92 Va. 310, such legislation was upheld on the broad ground that the privilege of suing the State is not an absolute right, but is allowed as a matter of grace; and may be extended or withheld, or when extended may be recalled, at the pleasure of the State, unless rights have vested during its existence which the State is forbidden by the State or Federal Constitution to defeat or impair. In this case the repeal of the act authorizing a judicial inquiry into the genuineness of coupons was held to be constitutional. Finally, the Funding Act itself, the source of so much litigation, was declared to be invalid, first partially so in Greenhow v. Vashon, 81 Va. 336, and then wholly so in Commonwealth v. McCullough, 90 Va. 597, on the ground that it was in conflict with sections 7 and 8 of Article VIII. of the State Constitution.

Corporate Charters.—These charters, as above shown, constitute contracts, the obligation of which cannot be impaired; and where the legislature, in granting such a charter, reserves the right to repeal or amend it, it may repeal it but it cannot amend or modify its terms without the consent of the incorporators. Yeaton v. Bank of Old Dominion, 21 Gratt. 593.

It is one of the omissions of the present Constitution that it contains no provision prohibiting the grant of a charter which may not be amended or repealed. "As the power to grant unamendable and irrepealable charters is one readily susceptible of being greatly abused, to the prejudice of important public interests, and has been greatly abused in the past, the people in a majority of the States, in framing or amending their constitutions, have prudently guarded against it by reserving the right to alter, amend, or repeal all laws that may be passed, conferring corporate powers. These provisions give protection from the time of their adoption, but the improvident grants theretofore made are beyond

their reach. In many States the constitutions also prohibit special charters, and all corporations are formed by the voluntary association of individuals under general laws." Cooley's Const. Lim., p. 335.

Retroactive Laws.—The passage of retroactive laws is not forbidden, and statutes which validate contracts, otherwise invalid, are sustained where they go no further than to bind a party by a contract which he has attempted to enter into, but which was invalid by reason of some personal inability on his part to make it, or through neglect of some legal formality, or in consequence of some ingredient in the contract forbidden by law. The legislature may declare valid contracts which were usurious at the time they were entered into, and may remove a disability to contract which it had previously imposed. Danville v. Pace, 25 Gratt. 1; Smoot v. Building Association, 95 Va. 686; and Bosang v. Building Association, 96 Va. 119.

Taking Private Property.—An individual may be authorized by the legislature to build a toll bridge, and incidentally to condemn land for that purpose. Plecker v. Rhodes, 30 Gratt. 798. Where a statute authorizes the condemnation of a fee simple estate, a less estate cannot be taken. Roanoke v. Burkowitz, 80 Va. 616. The construction of a telegraph line along a public road, in which the public owns only a right of way, imposes an additional servitude, and cannot be authorized without providing for just compensation to the owner of the fee simple. W. U. Telegraph Co. v. Williams, 86 Va. 696. But raising the grade of a street so as to give an approach to an overhead bridge, though it may impair the use of the street for some purposes, does not impose an additional servitude, and is not a taking of private property. Home Building Co. v. Roanoke, 91 Va. 52.

Taxation is a taking of property which must be done by due process of law. Violett v. Alexandria, 92 Va. 561, and Heth v. Radford, 96 Va. 272.

Freedom of the Press.—"A tax imposed on the business of publishing a newspaper is not an abridgment of the freedom of the press. The guaranties of the Constitution and Bill of Rights in

favor of the freedom of the press, freedom of speech and personal liberty were never intended to restrict the right of taxation for the support of the government. If these guaranties did restrict the power of taxation, the government would soon be insolvent and powerless to furnish the protection claimed." Harrison, J., Norfolk v. Norfolk Landmark Co., 95 Va. 564.

This decision was rendered January 27, 1898, and on the 26th of February following the newspapers secured themselves against the tax thereby declared valid by an act of legislature depriving the local authorities of the right to impose such a tax. In securing this exemption, on the ground that its freedom was invaded, the press not only gave proof of its power to protect itself, but furnished at the same time a good illustration of how a great principle may be turned to a thrifty use.

Religious Belief.—No person is incapacitated from being a witness on account of religious belief, or the absence of it. Perry v. Commonwealth, 3 Gratt. 632.

SEC. 15. No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be re-enacted and published at length.

Same as Article IV., sec. 16, Constitutions 1851 and 1864.

This section makes the title a necessary part of every act, and the conclusive index of the intent of the legislature in passing it. Its purpose is to prevent fraud and surprise in legislation by means of provisions in bills, which are not indicated in the titles. But it is not intended to obstruct honest legislation by preventing the incorporation into a single act of the entire statutory law on any general subject; and the title is not required to be a complete index of the contents of a bill. It is sufficient if the subjects not specified, however numerous and diverse they may be, have congruity or natural connection with the subject stated in the title, or are cognate or germane thereto, and may fairly be regarded as in furtherance of the object expressed in the title. When they are not of this character, and the act is broader than its title, the act is void, unless that part of it indicated in the title is complete in itself and capable of being executed, in which case it will be en-

forced, and the other provisions will be inoperative. The scope of the title is not enlarged by the addition of the words "and so forth." Lacy v. Palmer, 93 Va. 159.

If the act is amendatory, and the title of the act amended is sufficient to embrace the matters contained in the amendatory act, it is immaterial whether the title of the amendatory act would itself be sufficient; and when general statutes are consolidated into a code, in amending, re-enacting or repealing any part of the Code, or adding thereto, it is not necessary to do more than refer to the proper chapter and section to be amended, or repealed, or added to, and adopt and express in the title of the amendatory act the number and subject of such chapter, if the provision of such amendment, by re-enactment, or by additional section, or sections, is germane to the subject of the chapter. A title stating that the general purpose of an act is to amend and re-enact certain sections of the Code, and repeal others, giving the numbers and chapter of the sections referred to, and specifying the subject to which they relate, and to add independent sections is sufficient. Iverson Brown's Case, 91 Va. 762. It should be observed that the headlines of the sections of the Code are not part of the law, and in amending the Code by sections they should not be made part of the amendatory acts. 2 Va. Law Reg. 194.

The provision in regard to amendments does not affect the validity of a law not expressly amendatory of a former law, but operating as an amendment by reason of its inconsistency with it. Anderson v. Commonwealth, 18 Gratt. 300; and amending and re-enacting an act does not of itself give a retro-active effect to the new part of the act. Price v. Harrison, 31 Gratt. 131.

Questions arising under this section are discussed or decided in the following cases: Anderson v. Commonwealth, *supra*; Crawford v. Halstead, 20 Gratt. 211; Price's Case, 21 Gratt. 846; Price v. Harrison, 31 Gratt. 131; Supervisors v. Magruder, 84 Va. 828; Morriss v. Insurance Co., 85 Va. 588; Fidelity &c. Co. v. S. V. R. R. Co., 86 Va. 1; Powell v. Supervisors, 88 Va. 707; Lescallat v. Commonwealth, 89 Va. 878; Ingles v. Strause, 91 Va. 209; Iverson Brown's Case, *supra*; Cahoon v.

Iron Gate &c. Co., 92 Va. 367; Lucy v. Palmer, 93 Va. 159; Prison Association v. Ashby, 93 Va. 667; Martin v. South Salem Land Co., 94 Va. 28; Supervisors v. Alexandria, 95 Va. 469; Bosang v. Building Association, 96 Va. 119; Poindexter v. May, 2 Va. Sp. Ct. Rep. 142.

SEC. 16. The governor, lieutenant-governor, judges, and all others offending against the state by maladministration, corruption, neglect of duty, or other high crime or misdemeanor, shall be impeachable by the House of Delegates, and be prosecuted before the Senate, which shall have the sole power to try impeachment. When sitting for that purpose they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in case of impeachment shall not extend further than to removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the commonwealth; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the general assembly for the trial of impeachment.

Same as Article IV., sec. 18, Constitutions 1851 and 1864, except that in the Constitution of 1851 "cases" instead of "case," and "and" instead of "or" between "hold" and "enjoy," were used in the next to the last sentence, and "impeachments" instead of "impeachment" in the last sentence. Similar provisions were contained in the Constitution of 1830; and in all the constitutions except the first the impeachment provisions are similar to those of the Federal Constitution, and follow them closely in language. Article I., sec. 2, clause 5, and sec. 3, clauses 6 and 7, U. S. Constitution. Under the first constitution impeachments were prosecuted before the General Court, except that impeachments of judges of that court were prosecuted before the Court of Appeals.

SEC. 17. The general assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

Same as Article IV., sec. 32, Constitution 1851, and Article IV., sec. 30, Constitution 1864.

This provision does not forbid the incorporation of church agencies, such as boards or committees, for carrying on church work. Trustees &c. v. Guthrie, 86 Va. 125.

SEC. 18. No lottery shall hereafter be authorized by law; and the buying, selling, or transferring of tickets or chances in any lottery shall be prohibited.

Same as Article IV., sec. 33, Constitution 1851, and Article IV., sec. 31, Constitution 1864, except that in those constitutions there was a saving clause in favor of lotteries already organized.

SEC. 19. No new county shall be formed with an area of less than six hundred square miles; nor shall the county or counties from which it is formed be reduced below that area; nor shall any county having a population less than ten thousand be deprived of more than one-fifth of such population; nor shall a county having a larger population be reduced below eight thousand. But any county the length of which is three times its mean breadth, or which exceeds fifty miles in length, may be divided at the discretion of the general assembly. In all general elections the voters in any county not entitled to separate representation shall vote in the same election district.

Same as Article IV., sec. 34, Constitution 1851, and Article IV., sec. 32, Constitution 1864, except that in those constitutions the limitation in respect to population was as follows: "Nor shall any county having a white population less than five thousand be deprived of more than one-fifth of such population; nor shall a county having a larger white population be reduced below four thousand."

SEC. 20. The general assembly shall confer on the courts the power to grant divorces, change the names of persons, and direct the sale of estates belonging to infants and other persons under legal disabilities, but shall not, by special legislation, grant relief in such cases, or in any other case of which the courts or other tribunals may have jurisdiction.

Same as Article IV., sec. 35, Constitution 1851, and Article IV., sec. 33, Constitution 1864.

Special Legislation.—Additional constitutional provisions are needed against special legislation, which is legislation for the benefit of individuals or in the interest of particular localities. If there were no other reason against it, the mass of such legislation alone, which is such as seriously to obstruct the work of general legislation, would afford a sufficient reason for its being prohibited or strictly limited. In the Acts of 1889–90, for example, in which the public and private acts are printed separately, the public acts, including a long revenue bill, are embraced within 252 pages, while the private acts extend through 1,043 pages;

and in the Acts of the extra session of 1901, out of 350 acts and joint resolutions, something like 325 are private or local bills. But such legislation, besides interfering with the appropriate work of the legislature, is objectionable in itself. In other States it has been a fruitful source of corruption, and it may become so in Virginia. It destroys the uniformity and simplicity of the law; and, in so far as bills regulating the affairs of particular localities are concerned, it substitutes legislative control, at the dictation of the local representative, in the place of local self-government. Moreover, in the competition of individuals or localities for legislative favors, members of the legislature become the agents of such individuals or localities, instead of being the representatives of the entire State, and the higher functions of general legislation are neglected or inefficiently discharged. See Bryce's American Commonwealth, Vol. I., pp. 531, 536, 552, 553, 641, 660–663.

SEC. 21. The general assembly shall provide for the annual registration of births, marriages, and deaths.

The annual registration of births, marriages and deaths in the white population, and of births and deaths in the colored population, was required by Article IV., sec. 36, Constitution 1851, and Article IV., sec. 34, Constitution 1864, and the former constitution required also that a distinction should be made between free colored persons and slaves. These constitutions also required in the same section that the legislature should provide for the periodical registration of voters; and by Article III., sec. 4, of the present Constitution as adopted, the legislature was required to enact a general registration law at its first session under the Constitution, but this section was eliminated by Amendment 1876, and the Constitution as it now stands contains no provision in regard to the registration of voters.

SEC. 22. The manner of conducting and making returns of elections, of determining contested elections, and of filling vacancies in office, in cases not specially provided for by this constitution, shall be prescribed by law, and the general assembly may declare the cases in which any office shall be deemed vacant where no provision is made for that purpose in this constitution.

Same as Article IV., sec. 38, Constitution 1851, and Article IV., sec. 35, Constitution 1864, except that in those constitutions

the words "prescribed by law" are followed by the provision "but special elections to fill vacancies in the office of judge of any court shall be for the full term," which provision is omitted from the present Constitution.

Notwithstanding the omission of this provision, it was held in *Ex parte* Meredith, 33 Gratt. 119, the Bland and Giles County Judge Case, Id. p. 443, and Estes v. Edmondson, Id. p. 510, that, under the true construction of the Constitution a judge elected and commissioned to fill an unexpired term was entitled to take the office for the full term; but in Burks v. Hinton, 77 Va. 1, these cases were overruled, and it was held, Lewis, P., dissenting, that a judge so elected held only for the unexpired term. See note on Artice VI., sec. 5.

SEC. 23. The legislature shall have power to provide for the government of cities and towns, and to establish such courts therein as may be necessary for the administration of justice.

Added by amendment in 1876.

SEC. 24. The general assembly shall have power, by a two-thirds vote, to remove disabilities incurred under clause third, section one, article third, of this constitution, with reference to duelling.

Added by amendment in 1876.

ARTICLE VI.

JUDICIARY DEPARTMENT.

SEC. 1. There shall be a supreme court of appeals, circuit courts, and county courts. The jurisdiction of these tribunals, and the judges thereof, except so far as the same is conferred by this constitution, shall be regulated by law.

This section differs from Article VI., sec. 1, Constitutions 1851 and 1864, in providing for county courts, and in not providing for district courts; and in the Constitution of 1864 the mode of electing judges was prescribed in the same section.

A supreme court of appeals is provided for in all of the constitutions, and circuit courts, by name, in the Constitutions of 1851 and 1864, and in the present Constitution. The county court of the present Constitution differs both in its organization and jurisdiction from the colonial county court of the previous constitutions. See note on section 13 this Article.

In Carter's Case, 96 Va. 791, and Trimble's Case, 96 Va. 818, a distinction is drawn between courts provided for in the Constitution by name, and those established by the legislature under constitutional authority; and it was held that courts of the former class, in respect to their security against legislative interference, are courts of higher prerogative than those of the latter class.

SEC. 2. The supreme court of appeals shall consist of five judges, any three of whom may hold a court. It shall have appellate jurisdiction only, except in cases of *habeas corpus*, *mandamus*, and prohibition. It shall not have jurisdiction in civil cases where the matter in controversy, exclusive of costs, is less in value or amount than five hundred dollars, except in controversies concerning the title or boundaries of land, the probate of a will, the appointment or qualification of a personal representative, guardian, committee, or curator; or concerning a mill, roadway, ferry, or landing; or the right of a corporation or of a county to levy tolls or taxes, and except in cases of *habeas corpus*, *mandamus*, and prohibition, or the constitutionality of a law: provided that the assent of a majority of the judges elected to the court shall be required in order to declare any law null and void by reason of its repugnance to the federal constitution or to the constitution of this state.

This section corresponds almost exactly with Article VI., sec. 11, of the Constitutions of 1851 and 1864. In the Constitution of 1851 the first sentence contains the words "so elected" following "judges," and in the Constitution of 1864 this sentence was as follows: "The supreme court of appeals shall consist of three judges so chosen, any two of whom may hold a court." The proviso that a majority of the judges elected must concur to declare a law unconstitutional first appears in the present constitution. In the Constitutions of 1851 and 1864 the last exception, in the clause limiting the jurisdiction according to the value or amount in controversy, was "and except in cases involving freedom or the constitutionality of a law."

Neither of the first two constitutions contained any provision similar to this section. They did not limit the jurisdiction that might be conferred on the Court of Appeals, and did not fix the number of the judges. As first organized under the Constitution of 1776 the court was composed of the three Chancellors, the five Judges of the General Court and the three Judges of Admiralty, eleven in all, of whom five were a quorum; but under the act of December 17, 1788, the court was organized as a court of five

judges, separately elected as judges of that court. The number of the judges was reduced to four by act of January 14, 1807, to be further reduced to three, after the next vacancy; but by act of January 11, 1811, the number was again fixed at five, and it has so remained ever since, except under the Constitution of 1864, when it was three.

Jurisdiction of the Court of Appeals.—The character of the jurisdiction, whether original or appellate, which may be exercised by the Court of Appeals, is fixed by the Constitution, but the Constitution does not itself confer jurisdiction. It merely defines the limits within which the court may receive jurisdiction, and such jurisdiction as it has the capacity to receive must be conferred by legislative enactments. Price v. Smith, 93 Va. 14, and cases cited, and Prison's Association v. Ashby, Id. 667.

In any case the jurisdiction of the court must affirmatively appear, and the burden of showing it is on the appellant, but the court will look to the whole record to determine the existence of the fact, or facts, giving jurisdiction; and where the jurisdiction depends on a question as to the constitutionality of a statute, or municipal ordinance, it is sufficient if the court can see that that question was put in issue, whether by demurrer, plea, instructions, or otherwise, and was necessarily involved in the decree or judgment of the lower court. Batchelder v. Richardson, 75 Va. 835; Commonwealth v. Chaffin, 87 Va. 545; Atkins v. Richmond, 2 Va. Sup. Ct. Rep. 93.

When jurisdiction has been properly acquired on any of the grounds designated in the constitution and laws, it will be retained for all purposes, although the amount or value involved is less than $500; and when the jurisdiction depends on a constitutional question, it will not be lost if before the hearing, but after the *supersedeas* or writ of error was awarded, the question is decided in another case. But, if at the time when the *supersedeas* or writ of error was granted, the question had already been decided, and was no longer debatable, the appeal will be dismissed as improvidently awarded. W. U. Tel. Co. v. Powell, 94 Va. 268; and W. U. Tel. Co. v. Goddin, Id. 513.

Under the limitations imposed by this section the jurisdiction of the Court of Appeals is exclusively appellate, except in cases of *habeas corpus, mandamus* and prohibition; and its appellate jurisdiction in civil cases, but not in criminal cases, is limited to cases in which the value or amount in controversy is not less than $500, except in certain classes of cases to which, by the express language of the section, the limitation based on value or amount does not apply. Proceedings to correct assessments of license taxes, though a double tax has been assessed for failure to take out a license; and popular or *qui tam* actions for breach of a statutory duty, such as an action against an express company to recover a penalty for charging excessive rates, are civil and not criminal actions, and the limitation applies. Neal v. Commonwealth, 21 Gratt. 511, and So. Express Co. v. Walker, 92 Va. 59. Where the limitation applies it cannot be removed by the legislature, and an act giving the Commonwealth the right to an appeal in any civil case without regard to amount or value is invalid. McIntosh v. Braden, 80 Va. 217, and Callan v. Bransford, 86 Va. 535.

Matter in Controversy.—The matter in controversy, upon the amount or value of which jurisdiction depends, when jurisdiction does not exist on other grounds, is that for which the suit is brought, and upon which issue is joined; or that which is the essence and substance of the judgment, and by which the defendant may discharge himself. Umbarger v. Watts, 25 Gratt. 167; Gage v. Crockett, 27 Gratt. 735; Harman v. Lynchburg, 33 Gratt. 37.

Amount, or Value, in Controversy, when Plaintiff Appeals.—When the plaintiff is appellant the amount in controversy is the amount of his claim, which is ascertained from the bill or declaration, except when the claim as therein stated is shown to be reckless, unfounded and merely colorable, Cox v. Carr, 79 Va. 29; and a special verdict fixing the amount at less than the sum claimed does not affect the plaintiff's rights. McCrowell v. Burson, 79 Va. 290. But where the plaintiff's claim has been reduced to less than $500 by payments made in the suit he has no appeal, Marchant v. Healy, 94 Va. 614; and where the judgment is in

his favor, and he appeals, the difference between the amount of his claim and the judgment determines jurisdiction. Batchelder v. Richardson, 75 Va. 835; Ware v. Building Association, 95 Va. 680.

The plaintiff's claim may include claims acquired by assignment, after the institution of the suit, provided they are asserted in the same suit, and the assignment was *bona fide* and the plaintiff's ownership is established in the suit before the appeal, as by a decree or a master's report duly confirmed; and the aggregate, if not less than $500, gives jurisdiction, though none of the claims separately equals that amount. Fink v. Denny, 75 Va. 663; McCarty v. Hamaker, 82 Va. 471; Filler v. Tyler, 91 Va. 458. And where appellants have a joint interest in the recovery it matters not how it is to be divided among them. Martin v. Fielder, 82 Va. 455; White v. Building Co., 96 Va. 270; Cheatham v. Aistrop, 97 Va. 457. But where several claims, owned separately, are united in the same suit, they cannot be combined to give jurisdiction. Umbarger v. Watts, 25 Gratt. 167; Tebbs v. Lee, 76 Va. 744; White v. Building Co., 96 Va. 270.

Amount, or Value, when Defendant Appeals.—Where the defendant is the appellant the amount of the judgment or decree against him is the matter in controversy; and if the amount adjudged or decreed against him is payable to different parties in sums separately less than $500 the aggregate gives jurisdiction. Gage v. Crockett, 27 Gratt. 735; Smith v. Rosenheim, 79 Va. 540; Duffey v. Figgat, 80 Va. 664; Patterson v. McKinney, 88 Va. 748; Winchester &c. R. R. Co. v. Colfelt, 27 Gratt. 777; Atkinson v. McCormick, 76 Va. 791; Updike v. Lane, 78 Va. 132; Peters v. McWilliams, Id. 567; Saunders v. Waggoner, 82 Va. 316; Martin v. Fielder, Id. 455; Alexander v. Byrd, 85 Va. 690; Williams v. Clark, 93 Va. 690. But the amount of the judgment or decree is not conclusive on the question of jurisdiction, when it appears that the judgment or decree finally settles the rights of the parties in a matter actually in dispute, the sum or value of which is sufficient to give jurisdiction. Stuart v. Valley R. R. Co., 32 Gratt. 146. The plaintiff cannot defeat the defendant's right

to an appeal by a release of part of the verdict. Hansbrough v. Stinnett, 22 Gratt. 593.

Date at which Amount is Reckoned.—Whether the plaintiff or defendant appeals, the sum due at the date of the judgment or decree is reckoned as the amount of it, and not the sum due at some subsequent period by the accumulation of interest. Gage v. Crockett, 27 Gratt. 735; McCrowell v. Burson, 79 Va. 290.

Title of Land.—Possession is an element of title, and in an action of unlawful entry or detainer for the possession of land an appeal lies without reference to value or amount. Pannill v. Coles, 81 Va. 380. But no question of title is involved in suits to enforce trust deeds or liens on land, and jurisdiction depends on the amount of the debt secured. Umbarger v. Watts, 25 Gratt. 167; Eacho v. Cosby, 26 Gratt. 112; Fink v. Denny, 75 Va. 663; Buckner v. Metz, 77 Va. 107; Hawkins v. Gresham, 85 Va. 34; Cooke v. Bondurant, 85 Va. 47; Schmelz v. Rix, 95 Va. 509; Florence v. Morien, 2 Va. Sup. Ct. Rep. 53; Cash v. Humphreys, Id. 387. But in Buckner v. Metz, *supra*, it was held that where the value of the land, in a suit to enforce a judgment lien, was shown to be less than $500, there was no appeal in favor of the judgment creditor, notwithstanding his judgment was for more than that amount.

SEC. 3. Special courts of appeals, to consist of not less than three nor more than five judges, may be formed of the judges of the supreme court of appeals and of the circuit courts, or any of them, to try any cases on the docket of said court in respect to which a majority of the judges thereof may be so situated as to make it improper for them to sit on the hearing of the same; and also to try any cases on the said docket which cannot be otherwise disposed of with convenient dispatch.

The Constitutions of 1851 and 1864, Article VI., sec. 12, also provide for special courts of appeals, to be formed in the same manner, to try the same and other classes of cases except that they were not given the power to try cases which could not be otherwise disposed of with convenient dispatch.

In giving effect to this provision, the legislature may provide for a court of three, and authorize the court of appeals to designate the circuit judges to constitute it. Bolling v. Lersner, 26 Gratt. 36.

Stuart v. Peyton, 97 Va. 796, is a recent case decided by a special court of appeals formed according to this section, and section 3095 of the Code.

SEC. 4. When a judgment or decree is reversed or affirmed by the supreme court of appeals the reasons therefor shall be stated in writing and preserved with the records of the case.

Same as Article VI., sec. 13, Constitutions 1851 and 1864, except that in those constitutions "record" is used instead of "records."

SEC. 5. The judges shall be chosen by the joint vote of the two houses of the general assembly, and shall hold their office for a term of twelve years; they shall, when chosen, have held a judicial station in the United States, or shall have practiced law in this or some other state for five years.

Under the first two constitutions the judges were chosen as provided in this section, and under the Constitution of 1864 they were chosen in the same way, but from persons nominated by the Governor, one being chosen for each of the three judicial sections into which the State was divided. Under the Constitution of 1851 the State was divided into five sections, and a judge was elected from each section by popular vote. An age qualification of 35 and 30 years was prescribed by the Constitutions of 1851 and 1864 respectively, and no other qualification was prescribed by those constitutions except that by the Constitution of 1864 a year's residence in the State previous to election was required. No qualifications were prescribed by the first two constitutions. The Constitutions of 1851 and 1864 both required the judges during their continuance in office to reside in the sections for which they were respectively chosen. The term of office under the first two constitutions was during good behavior; by all subsequent constitutions it is fixed at twelve years.

Election of Judges.—In consequence of the tenure of office being for fixed terms, beginning and ending at the same time, with elections to fill vacancies giving office only for the unexpired term, the election of the whole court, at the end of the term, devolves on the same legislature, under circumstances not favorable to a choice according to the merits of the candidates. This result, as

well as the risk that the majority of the legislature, charged with the duty of electing the judges, may by chance not represent the best interests of the people, may be avoided, and, at the same time, continuity of information and experience on the part of the court as to rules of practice and the course of decisions may be secured by the judges being so classified as to be elected by different legislatures. The late R. G. H. Kean, Esq., of Lynchburg, in a paper on "Our Judicial System," read before the Va. State Bar Association in July, 1889, Reports, p. 139, suggested the following amendment for this purpose:

"SEC. 5. The judges of the supreme court of appeals shall be chosen by the joint vote of the two houses of the general assembly, and shall, after the first election hereunder, hold their office for a term of twelve years. They shall, when chosen, have held a judicial station in the United States, or shall have practiced law in this or some other state for five years.

"At the first election of said judges under this amendment, the general assembly shall elect one of said judges for a term of four years, one for a term of six years, one for a term of eight years, one for a term of ten years, and one for a full term of twelve years."

Term of Office.—In *Ex parte* Meredith, 33 Gratt. 119; Bland and Giles County Judge Case, Id. 443; McCraw v. Williams, Id. 510; Montague v. Massey, 76 Va. 307; and Neal v. Allen, Id. 437, it was held that a judge, elected to a vacancy occurring before the end of the term, was elected for the full term prescribed by the Constitution, and not for the unexpired term, the vacancy being in the office, not in the term. These cases were overruled in Burks v. Hinton, 77 Va. 1, the court being of opinion that the term fixed by the Constitution was intended to be preserved in its integrity, and that intermediate elections were, therefore, for the unexpired term. Lewis, P., dissented. This case was followed in Fitzpatrick v. Kirby, 81 Va. 467, and in Jameson v. Hudson, 82 Va. 279. In Howison v. Weeden, 77 Va. 704, it was held that parties to the overruled cases, or their privies, were concluded by the decisions in those cases.

SEC. 6. The officers of the supreme court of appeals shall be appointed by the said court or by the judges thereof in vacation. Their duties, compensation, and tenure of office shall be prescribed by law.

Article VI., sec. 18, Constitution 1851, and Article VI., sec.

17, Constitution 1864, differ from this section only in providing that the District Courts, which were abolished by the present Constitution, should also appoint their own officers.

No appointive power, except as provided in this section, is now conferred on any of the courts by the Constitution. Under the first two constitutions all the courts had the power to appoint their own clerks; and the sheriffs and coroners, though commissioned by the governor, were nominated by the county courts, and the constables were appointed by the justices or judges.

SEC. 7. The supreme court of appeals shall hold its sessions at two or more places in the state, to be fixed by law.

The place for holding the Court of Appeals was not fixed by any previous constitution.

SEC. 8. At every election of a governor an attorney-general shall be elected by the qualified voters of this commonwealth. He shall be commissioned by the governor, perform such duties and receive such compensation as may be prescribed by law, and shall be removable in the manner prescribed for the removal of judges.

Same as Article VI, sec. 22, Constitution 1851, and Article VI, sec. 21, Constitution 1864, except that in those constitutions the first sentence did not contain the word "qualified" before "voters," and "commonwealth" in that sentence was followed by "for the term of four years."

All the constitutions provide for an attorney-general. Under the first two constitutions he was elected by the joint vote of the two Houses of the General Assembly; and held office, under the first constitution, during good behavior, and under the second, at the pleasure of the legislature.

The word "prescribed," relating to the compensation to be paid, does not mean fixed before-hand in the sense that it cannot afterwards be changed, and the legislature may reduce the salary of the attorney-general at any time during his term. Field v. Auditor, 83 Va. 882. But, in Blair v. Marye, 80 Va. 485, it was held, by a divided court, that the legislature could not withhold the salary prescribed by law, or authorize the auditor to do so, it order to make good an indebtedness for moneys improperly withdrawn.

Circuit Courts.

SEC. 9. The state shall be divided into sixteen judicial circuits, as follows:

1. The counties of Norfolk, Princess Anne, Nansemond, Isle of Wight, Southampton, Surry, and the city of Norfolk shall constitute the first circuit.

2. The counties of Sussex, Greenesville, Brunswick, Prince George, Dinwiddie, Nottoway, Chesterfield, and the city of Petersburg shall constitute the second circuit.

3. The counties of Mecklenburg, Lunenburg, Charlotte, Amelia, Powhatan, Prince Edward, Buckingham, and Cumberland shall constitute the third circuit.

4. The counties of Halifax, Pittsylvania, Henry, Patrick, Franklin, and the town of Danville shall constitute the Fourth circuit.

5. The counties of Bedford, Campbell, Appomattox, Amherst, Nelson, and the city of Lynchburg shall consitute the fifth circuit.

6. The counties of Albemarle, Fluvanna, Culpeper, Goochland, Madison, Greene, and Orange shall constitute the sixth circuit.

7. The county of Henrico and the city of Richmond shall constitute the seventh circuit.

8. The counties of Accomac, Northampton, York, Elizabeth City, Warwick, James City, New Kent, Charles City, and the city of Williamsburg shall constitute the eighth circuit.

9. The counties of Lancaster, Northumberland, Mathews, Middlesex, Gloucester, King William, Essex, and King and Queen shall constitute the ninth circuit.

10. The counties of Westmoreland, Spotsylvania, Caroline, Hanover, Stafford, King George, Richmond, and Louisa shall constitute the tenth circuit.

11. The counties of Loudoun, Fauquier, Fairfax, Prince William, Rappahannock, and Alexandria shall constitute the eleventh circuit.

12. The counties of Frederick, Clarke, Warren, Page, Shenandoah, and Rockingham shall constitute the twelfth circuit.

13. The counties of Augusta, Rockbridge, Bath, Highland, and Alleghany shall constitute the thirteenth circuit.

14. The counties of Botetourt, Roanoke, Montgomery, Floyd, Giles, and Craig shall constitute the fourteenth circuit.

15. The counties of Carroll, Grayson, Wythe, Pulaski, Bland, and Tazewell shall constitute the fifteenth circuit.

16. The counties of Smyth, Washington, Lee, Scott, Wise, Russell, and Buchanan shall constitute the sixteenth circuit.

The Constitutions of 1851 and 1864 provided for twenty-one and sixteen circuits respectively, each grouping the counties and cities into circuits. Article VI., sec. 2, Constitutions 1851 and 1864.

SEC. 10. The general assembly may rearrange said circuits, or any of them, and increase or diminish the number thereof when the public interests shall require it.

The Constitutions of 1851 and 1864, Article VI., sec. 5, also

contain provisions for the rearrangement of the circuits, but only at stated intervals, and in such manner as to conform to the division of the State into districts and sections.

SEC. 11. For each circuit a judge shall be chosen by the joint vote of the two houses of the general assembly, who shall hold his office for a term of eight years, unless sooner removed in the manner prescribed by this constitution. He shall, when chosen, possess the same qualifications of judges of the supreme court of appeals; and during his continuance in office shall reside in the circuit of which he is judge.

The term of office under the Constitutions of 1851 and 1864, Article VI., sec. 6, was also eight years; and the judges were required to live in the circuits for which they were elected; but under the Constitution of 1851 the election was by the people of the several circuits, and, under the Constitution of 1864, by the legislature from persons nominated by the governor. These constitutions prescribed that the judges when elected should be at least thirty years old and should have resided one year in the State.

The terms of the judges beginning and ending together, all the judges are elected by the same legislature, giving rise to evils suggested in the note to sec. 5 of this Article. These evils can be largely corrected by a classification of the judges so that only the judges of the same class shall be elected by the same legislature.

SEC. 12. A circuit court shall be held at least twice a year by the judges of each circuit in every county and corporation thereof wherein a circuit court now is or may hereafter be established. But the judges may be required or authorized to hold the courts of their respective circuits alternately, and the judge of one circuit to hold court in any other circuit.

This section does not differ from Article VI., sec. 7, Constitutions 1851 and 1864, except that in those constitutions the provision that judges may be required or authorized to hold the courts of their respective circuits alternately applies only to judges of the same district, a division not retained in the present Constitution.

The provision just referred to has fortunately not been acted on by the legislature so as to give effect to it. Among the consequences that might result from the arrangement authorized by it are the reversal of one judge by another at a rehearing, or on a bill of review; delays by consent or otherwise to avoid an objectionable judge, or secure an acceptable one; and, when a mistrial

of a law case occurs, the necessity of rearguing all the instructions at the second trial. Nor would such a system be favorable to the establishment of the friendly relations and mutual acquaintance which should subsist between the bench and the bar.

County Courts.

SEC. 13. In each county of this commonwealth there shall be a court called the county court, which shall be held monthly by a judge learned in the law of the state, and to be known as the county court judge; provided that counties containing less than eight thousand inhabitants shall be attached to adjoining counties for the formation of districts for county judges. County court judges shall be chosen in the same manner as judges of the circuit courts. They shall hold their office for a term of six years, except the first term under this constitution, which shall be three years, and during their continuance in office they shall reside in their respective counties or districts. The jurisdiction of said courts shall be the same as that of the existing county courts, except so far as it is modified by this constitution or may be changed by law.

The County Courts.—The colonial county courts were retained under the first two constitutions without material change. They were self-perpetuating bodies, consisting of justices, nominated by the courts themselves and appointed by the governor to hold office during good behavior, and serving without compensation.

Material changes, seriously affecting the character of these courts, were made by the Constitution of 1851, which provided that each county should be laid off into districts, from each of which four justices should be elected by popular vote, to be commissioned by the governor and hold office for four years; and that, when sitting, as judges of the county court, the justices should receive a *per diem* compensation. Article VI., secs. 25–28. The same provisions were retained in the Constitution of 1864. Article VI., secs. 24–27.

The deterioration of the county courts began with these changes. The *per diem* compensation brought out a class of aspirants, who sought office for its pecuniary benefits, and the aspirations of these men, with whom men of position and ability were unwilling to compete, were favored by the mode of election, a popular vote by districts. Under the present constitution, which substitutes a single judge for a court of justices, the mode of election is even worse, nominally by the legislature, but, in reality, by the county

delegate, who makes the county judgeship one of the spoils of his office. In addition to this, the great decrease of litigation and of general law business in the counties has resulted in such a diminution and decline of the country bar, that the selection of a suitable county judge, even when the disposition to make such a selection exists, is increasingly difficult.

Mr. Kean, in the address on "Our Judicial System" above referred to, speaks of the county courts as follows:

"The Constitution of the State, Article VI., sec. 13, provides: 'in each county of this Commonwealth, there shall be a court called a county court, which shall be held monthly by a judge *learned in the law*,' etc. The General Assembly has treated this provision as if it was a jest, and turned it into a mockery. Many of the persons appointed have never been lawyers at all, and yet have been selected to pass upon the liberty and lives of citizens, to decide important probate causes, and deal with the whole police jurisdiction of the country.

"That this is a great evil requiring reformation seems to me to be apparent on the face of the statement. . . . . Many of our county courts are intolerable travesties; all that has been said of the waste of time, the inadequacy, the tendency to bring the law and public justice into contempt might be repeated here with aggravations. Criminal justice is relaxed among us to an alarming extent, from sheer inability in the judges to cope with counsel for defence on legal propositions. These judges, conscious of their ignorance, often rule and instruct in favor of a criminal for fear of doing him a wrong, or because the State has no appeal, and it is safe. Juries cannot be expected to have much regard for adverse instructions given by a judge whose attainments in the law they know to be just equal with their own, namely, none at all. In a society of the mixed elements which exist here, it is of supreme importance that the administration of the law, especially the criminal law, should be prompt, firm, wise, accurate and just—just to society as well as to the citizens. This cannot be, unless the county judges be in fact, as the Constitution requires, 'learned in the law.'

"The material upon the county bench, indifferent as much of it unquestionably is in comparison with the duties confided to it, in many instances is surprisingly above what might reasonably be expected. The tendency, however, since the Constitution was adopted, has decidedly been to deterioration. The people are losing sight, by use, of what their courts ought to be. The county courts need reform and need it badly." Report Va. State Bar Ass'n, 1889, p. 139.

The only reform which now seems adequate is the substitution of an entirely new system. The State, for example, might be divided into not more than twenty or twenty-five districts, each embracing not less than four or five counties, and a judge be elected for each district to hold court monthly in each county. The salary of the judges should be fixed by the Constitution at not less than $2,000 a year, which would entail a cost in salaries not greater and possibly less than that of the present system, and would have a strong tendency to secure the services of a better class of men. Under such a system, also, the influence of the county delegate in the election of the judges would be reduced to more nearly its proper proportions.

Decisions.—When a county, attached to another to form a judicial district, has a population of not less than 8,000, it may be detached and given a separate court, without violating any constitutional rights of the judge of the district, notwithstanding his term has not expired and his compensation, in excess of his salary, consisting of an allowance based on population, is thereby diminished. Foster v. Jones, 79 Va. 642. It is competent for the legislature to provide that in certain cases the judge of one county may hold court in another county or district. Smith v. Commonwealth, 75 Va. 904. Elections of judges to fill vacancies are for the unexpired term. See note on section 5 of this Article.

Government of Cities and Towns.

SEC. 14. For each city or town in the state containing a population of five thousand shall be elected, on the joint vote of the two houses of the general assembly, one city judge, who shall hold a corporation or hustings court of said city or town as often and as many days in each month as may be prescribed by law, with similar jurisdiction which may be given by law to the circuit courts

of this state, and who shall hold his office for a term of six years: provided, that in cities or towns containing thirty thousand inhabitants there may be elected an additional judge to hold courts of probate and record, separate and apart from the corporations or hustings courts, and perform such other duties as shall be prescribed by law.

The Constitutions of 1830, 1851 and 1864 (Article V., sec. 1; Article VI., sec. 33, and Article VI., sec. 32, respectively), provided merely that the legislature might vest such jurisdiction as might be deemed necessary "in corporation courts and in the magistrates who may belong to the corporate body."

Both classes of courts provided for by this section are city courts. Holliday v. Auditor, 77 Va. 428. In providing that a corporation court shall be held "as often and as many days in each month as may be prescribed by law," this section does not require that the whole term shall be held in the same calendar month; and a court, whose term begins on the first Monday of the month, may continue its session until the first Monday of the next month. Chahoon's Case, 21 Gratt. 822. And under a law giving the corporation courts authority to change the time for the commencement of their term a court may extend the time of its session at any term by changing the day for the commencement of the succeeding term. Cluverius's Case, 81 Va. 787.

A law that a cause may, on motion, after notice, be removed as a matter of right from the corporation to the circuit court of the same jurisdiction does not infringe any constitutional right of the corporation court. Danville v. Blackwell, 80 Va. 38. A corporation court, vested by law with the same jurisdiction as the circuit court, has power in a criminal case to summon jurors from outside its jurisdiction, though that power is by law given in terms only to the circuit court. Craft v. Com'lth, 24 Gratt. 612.

SEC. 15. Also, the following enumerated officers, who shall be elected by the qualified voters of the said cities or towns: One clerk of the corporation or hustings court, who shall also be the clerk of the circuit court, except in cities or towns containing a population of thirty thousand or more, in which city or town there may be a separate clerk for the circuit court, who shall hold his office for a term of six years.

Previous constitutions contain no provisions in regard to city officers, except Article VI., sec. 34, Constitution 1851, and Article

VI., sec. 33, Constitution 1864, which are as follows: "All officers appertaining to the cities and other municipal corporations shall be elected by the qualified voters, or appointed by the constituted authorities of such cities or corporations, as may be prescribed by law."

This section and the following sections, 16 to 21 inclusive, in regard to the government of cities and towns, have no appropriate place in an article on the judiciary department; and it may well be doubted whether it would not be better to omit them entirely, and provide that general laws shall be passed for the organization and government of cities and towns, leaving the details to the discretion of the legislature. Section 20, indeed, contains such a provision and forbids the passage of any special act, but this provision is nullified by the exception that such an act may be passed "in cases where, in the judgment of the General Assembly, the object of such act cannot be obtained by general laws." See note on "Special Legislation," Article V., sec. 20, and note on Article X., sec. 12.

SEC. 16. One commonwealth's attorney, who shall be the commonwealth's attorney for the circuit court, and shall hold his office for a term of two years.

See note on section 15.

SEC. 17. One city sergeant, who shall hold his office for a term of two years.

See note on section 15.

SEC. 18. One city or town treasurer, whose duties shall be similar to those of county treasurer, and shall hold his office for a term of three years.

See note on section 15.

SEC. 19. One commissioner of the revenue.

See note on section 15.

SEC. 20. There shall be chosen by the electors of every city a mayor, who shall be the chief executive officer thereof, and who shall see that the duties of the various city officers are faithfully performed. He shall have power to investigate their acts, have access to all books and documents in their offices, and may examine them and their subordinates on oath. The evidence given by persons so examined shall not be used against them in any criminal proceedings. He shall also have power to suspend or remove such officers whether they be elected or appointed, for misconduct in office or neglect of duty, to be specified in the

order of suspension or removal; but no such removal shall be made without reasonable notice to the officer complained of and an opportunity afforded him to be heard in his defence. All city, town, and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof as the general assembly shall designate. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people or appointed, as the general assembly may direct. Members of common councils shall hold no other office in cities, and no city officer shall hold a seat in the general assembly. The general assembly, at its first session after the adoption of this constitution, shall pass such laws as may be necessary to give effect to the provisions of this article. General laws shall be passed for the organization and government of cities, and no special act shall be passed except in cases where, in the judgment of the general assembly, the object of such act cannot be attained by general laws. Nothing in this article shall affect the power of the general assembly over quarantine, or in regard to the port of Norfolk, or the interest of the state in the lands under water and within the jurisdiction or boundaries of any city, or to regulate the wharves, piers, or slips in any city. All laws or city ordinances in conflict with the provisions of the preceding sections shall be void from and after the adoption of this constitution.

See note on section 15.

The provision that the mayor and other officers, as provided by the foregoing sections, shall be chosen by the electors of cities or towns, did not apply to appointments made by authority of law after the adoption of the present Constitution, but before an election under it could be had; and it does not apply to appointments made by the legislature in incorporating a town, the appointees being authorized to act until their successors are regularly elected. Richmond Mayoralty Case, 19 Gratt. 673; Roche v. Jones, 87 Va. 484.

The mayor, in investigating the acts of city officers, acts as the chief executive officer of the city and not as a court, and a writ of prohibition will not lie to restrain him from proceeding with the investigation. The executive and judicial departments of city governments are as separate and distinct as the executive and judicial departments of the State government; and the mayor in the discharge of his executive duties is not subject to control by the courts.

But while the mayor has power under the Constitution to investigate the acts of city officers, and may suspend or remove them

for misconduct in office, his power extends only to city officers and not to other officers, who, though elected by the people of the city or appointed by city authorities, are State rather than city officers. City officers are those whose duties and functions relate exclusively to the local affairs of the city, and in whose conduct and administration the city alone is interested. Such, perhaps, are city engineers, surveyors, officers having superintendence and control of streets, parks, water-works, gas-works, hospitals, sewers, cemeteries, and city inspectors, &c. On the other hand, there are other officers who are elected or appointed for the city, and whose jurisdiction is confined to the city limits, but their duties and functions, in a measure, concern the whole State. They are State agencies or instrumentalities operating to some extent through the medium of city charters in the preservation of the public peace and good government. However elected or appointed, and however paid, they are as much State officers as constables, justices of the peace, or commonwealth's attorneys. The chief of police is a State and not a city officer. Burch v. Hardwicke, 23 Gratt. 51, and 30 Gratt. 30.

SEC. 21. All regular elections for city or town officers under this article shall be held on the fourth Thursday in May, and the officers-elect shall enter upon their duties on the first day of July succeeding.

See note on section 15.

General Provisions.

SEC. 22. All the judges shall be commissioned by the governor, and shall receive such salaries and allowances as may be determined by law, the amount of which shall not be diminished during their term of office. Their terms of office shall commence on the first day of January next following their appointment, and they shall discharge the duties of their respective offices from their first appointment and qualification under this constitution until their terms begin.

The Constitution of 1830 provided that "the judges of the supreme court of appeals and of the superior courts, shall receive fixed and adequate salaries, which shall not be reduced during their continuance in office." Article V., sec. 5. The Constitutions of 1851 and 1864, Article VI., sec. 14, provided as follows: "Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries, which shall not be diminished

during their continuance in office. The salary of a judge of the supreme court of appeals shall not be less than three thousand dollars, and that of a judge of the circuit court, not less than two thousand dollars per annum, except that of the judge of the fifth circuit, which shall not be less than fifteen hundred dollars per annum; and each shall receive a reasonable allowance for necessary travel."

The words "salaries and allowances" were held in Foster v. Jones, 79 Va. 642, not to include the additional compensation of twenty dollars allowed by law to the county judges for every thousand inhabitants over ten thousand in their counties. In Montague's Adm'r v. Massey, 76 Va. 307, it was held that a judge, originally elected to fill a vacancy, and re-elected at a reduced salary at the end of the unexpired term, was entitled to the unreduced salary for the full term from the time of his first election; and that, though he accepted the reduced salary from the time of his re-election until his death, his administrator had the right to recover the difference. This case was decided on the principle that elections to fill vacancies were for the full term, a principle subsequently overruled. See note on section 5.

The provision in regard to the commencement of the terms of the judges, which was first introduced in the present Constitution, has proved to be a troublesome one in its application. In *In re* Broadus, 32 Gratt. 779, it was held by two judges that the term of a judge elected to succeed a judge whose term expired December 31, 1879, began January 1, 1880, notwithstanding the fact that he was not elected until January 12, 1880. Judges Burks and Staples did not sit, and Judge Christian dissented on this point. In *Ex parte* Fisher, 33 Gratt. 232, it was held that the term of a judge of the corporation court, elected in March, 1874, when the court was first established, began on the first of January following, but that the judge was authorized to discharge the duties of his office from the time of his qualification.

SEC. 23. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the general assembly

may be about to proceed shall have notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereon.

The same as Article VI., sec. 17, Constitution 1851, and Article VII., sec. 16, Constitution of 1864. The Constitution of 1830, Article V., sec. 6, contains the same provision except that the concurrence of "two-thirds of the members present," instead of "a majority of all the members elected to each house," was required for the removal of a judge.

SEC. 24. Judges of the supreme court of appeals and judges of the circuit courts shall not hold any other office of public trust during their continuance in office.

Article VI., sec. 16, Constitutions 1851 and 1864, was as follows: "No judge, during his term of service, shall hold any other office, appointment or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he, during said term, or within one year thereafter, be eligible to any political office."

SEC. 25. Judges and all other officers, elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified.

The same as Article VI., sec. 23, Constitution 1851, and Article VI., sec. 22, Constitution 1864, except that in those constitutions the word "whether" preceded "elected," and in the Constitution of 1851 "offices" was preceded by the word "respective."

This section applies to all State officers, *Ex parte* Lawhorne, 18 Gratt. 85; but it applies only to officers elected under the present Constitution, and did not have the effect of continuing in office persons who were performing official duties when the Constitution was adopted. Richmond Mayoralty Case, 19 Gratt. 673.

When an incumbent holds over after the end of his term because his successor has not been elected, or has failed to qualify within the time prescribed by law, the office, notwithstanding such temporary holding over, is vacant, and may be filled in the manner provided by law, and when it is so filled, and the officer appointed or elected qualifies, the term of the incumbent holding over ceases.

In re Broadus, 32 Gratt. 779; Johnson v. Mann, 77 Va. 265; Kilpatrick v. Smith, Id. 347; Branham v. Long, 78 Va. 352.

SEC. 26. Writs shall run "in the name of the commonwealth of Virginia," and be attested by the clerks of the several courts. Indictments shall conclude "against the peace and dignity of the commonwealth."

Same as Article VI., sec. 24, Constitution 1851, and Article VI., sec. 23, Constitution 1864. Article V., sec. 9, Constitution 1830, is also the same, except it has "bear test" instead of "be attested;" and the Constitution of 1776, after providing that commissions and grants shall run in the name of the Commonwealth of Virginia, &c., adds: "Writs shall run in the same manner, and bear test by the clerks of the several courts. Indictments shall conclude 'against the peace and dignity of the commonwealth.'"

The provisions of this section are mandatory; and an indictment, or count of an indictment, which does not conclude in the prescribed manner is fatally defective. Com'lth v. Carney, 4 Gratt. 546; Thompson v. Com'lth, 20 Gratt. 724; and Early v. Com'lth, 86 Va. 921. But the addition of the words "of Virginia" after "Commonwealth" does not vitiate the conclusion. Brown v. Com'lth, 86 Va. 466.

ARTICLE VII.

COUNTY ORGANIZATIONS.

SEC. 1. There shall be elected by the qualified voters of the county one sheriff, one attorney for the commonwealth, who shall also be the commonwealth's attorney for the circuit court; one county clerk, who shall also be the clerk of the circuit court, except that in counties containing fifteen thousand inhabitants there may be a separate clerk for the circuit court; one county treasurer, and so many commissioners of the revenue as may be provided by law; and there shall be appointed, in a manner to be provided by law, one superintendent of the poor and one county surveyor; and there shall also be appointed, in the manner provided for in article eight, one superintendent of schools. All regular elections for county officers shall be held on the fourth Thursday in May, and all officers elected or appointed under this provision shall enter upon the duties of their offices on the first day of July next succeeding their election, and shall hold their respective offices for the term of four years, except that county and circuit court clerks shall hold their offices for six years.

This entire Article was new, but as it now stands all of it except the last two sections was adopted by amendment in 1874. The original of the first section as adopted was as follows:

"SEC. 1. There shall be elected by the qualified voters of the county one sheriff, one attorney for the commonwealth, who shall also be the commonwealth's attorney for the circuit court, one county clerk, who shall also be the clerk of the circuit court, except that in counties containing fifteen thousand inhabitants there may be a separate clerk for the circuit court, one county treasurer, and one superintendent of the poor; and there shall be appointed in the manner provided for in Article VIII., one superintendent of schools: *Provided*, That counties containing less than eight thousand inhabitants may be attached to adjoining counties for the formation of districts for the superintendents of schools: *Provided also*, That in counties containing thirty thousand inhabitants there may be appointed an additional superintendent of schools therein. All regular elections for county officers shall be held on the first Tuesday after the first Monday in November, and all officers elected or appointed under this provision shall enter upon the duties of their offices on the first day of January next succeeding their election, and shall hold their respective offices for the term of three years, except that the county and circuit court clerks shall hold their offices for four years."

The amendment added to the list of offices "so many commissioners of revenue as may be provided by law" and "one county surveyor;" and struck out the provision authorizing an additional superintendent of schools in counties containing thirty thousand inhabitants; and it changed the time for electing county officers, and extended their term of office from three to four years, except that the term of circuit and county court clerks was extended from four to six years.

County Officers.—The only county officers provided for by the first two constitutions were justices of the peace, clerks of the courts, sheriffs, coroners and constables. Besides the clerks of the circuit courts and the justices of the peace, the only county officers provided for by the constitution of 1851 were a clerk of the county court, a surveyor, an attorney for the commonwealth, a sheriff and so many commissioners of the revenue as might be authorized by law, constables and overseers of the poor. Article VI., sec. 30. The same officers were provided for by the Constitution of 1864. Article VI., sec. 29. In addition to these officers, except that in counties of less than fifteen thousand inhabitants the clerk of the county court is also clerk of the circuit court, the present constitution provides for other county officers as follows: A county judge, a treasurer, a superintendent of the poor, a superintendent of schools, one supervisor for each magisterial dis-

trict, each county being divided into not less than three such districts, and three school trustees for each school district, each magisterial district being divided into as many school districts as may be deemed necessary. A county of fifteen thousand inhabitants is entitled, therefore, at the least, to the following corps of constitutional officers: A county judge, a clerk of the county court, a clerk of the circuit court, a commonwealth's attorney, a sheriff, a treasurer, as many commissioners of revenue as may be provided by law, a superintendent of the poor, a county surveyor, a superintendent of schools, three supervisors, nine justices of the peace, three constables, three overseers of the poor and nine school trustees. If, then, there is only one commissioner of revenue, and there are only three magisterial districts, which is not usual, and the school districts are co-extensive with the magisterial districts, the minimum number of such officers is thirty-six. Lest the number of officers specially authorized might prove insufficient, section 4 of this Article provides that "nothing in this article shall be construed as prohibiting the general assembly from providing by law for any additional officers in any city or county."

Except the county judge, who is elected by the legislature, and the superintendent of schools, who is appointed by the board of education, all these officers are elected by the people, those provided for in this section being elected by the voters of the whole county, and those provided for in the next two sections by the voters of the magisterial districts and school districts respectively. Their functions are judicial and administrative, and there is no county board or council with legislative powers.

A superintendent of schools is a constitutional officer and cannot be legislated out of office before the expiration of his term as fixed by the Constitution. Pendleton v. Miller, 82 Va. 390.

SEC. 2. Each county of the state shall be divided into so many compactly located magisterial districts as may be deemed necessary, not les than three: provided, that after these have been formed no additional districts shall be made containing less than thirty square miles; each magisterial district shall be known as——magisterial district of——county. In each district there shall be elected one supervisor, three justices of the peace, one constable, and one overseer of the poor, who shall hold their respective offices for the term of two years. All regular elections for magisterial district officers shall take place on the fourth

Thursday in May, and all officers so elected shall enter upon the duties of their respective offices on the first day of July next succeeding their election. The supervisors of the districts shall constitute the board of supervisors for that county, whose duty it shall be to audit the accounts of the county, examine the books of the commissioners of the revenue, regulate and equalize the valuation of property, fix the county levies for the ensuing year, and perform any other duties required of them by law.

Amendment November 1874. The original form was as follows:

Townships.

SEC. 2. Each county of the State shall be divided into so many compactly located townships as may be deemed necessary, not less than three: *Provided*, That after three have been formed no additional township shall be made containing less than thirty square miles. Each township shall be known as the township of ——, in the county of ——, and may sue and be sued by such title. In each township there shall be elected annually one supervisor, one township clerk, one assessor, one collector, one commissioner of roads, one overseer of the poor, one justice of the peace, who shall hold his office three years; one constable, who shall hold his office three years: *Provided*, That at the first election held under this provision there shall be three justices of the peace and three constables elected, whose terms shall be one, two and three years respectively. All regular elections for township officers shall take place on the fourth Thursday in May, and all officers so elected shall enter upon the duties of their respective offices on the first day of July next succeeding their election. The supervisors of each township shall constitute the board of supervisors for that county, and shall assemble at the courthouse thereof on the first Monday in December, in each year, and proceed to audit the accounts of said county, examine the books of the assessors, regulate and equalize the valuation of property, fix the county levies for the ensuing year, apportion the same among the various townships, and perform such other duties as may be prescribed by law.

The amendment changed the name "township" to "magisterial district;" omitted from the officers to be elected from each district the township clerk, the assessor, collector and commissioner of roads, provided for in the original; reduced the number of constables from three for each district to one; fixed the term of office of the officers provided for at two instead of three years; and omitted the provision for an annual meeting of the board of supervisors, and the provision requiring them to apportion the county levies among the various districts. The assessor omitted by the amendment is provided for in section 1 of this Article under the name of commissioner of revenue.

The magisterial districts as subdivisions of the counties were

first constitutionally provided for by Article VI., sec. 27, Constitution 1851, which is reproduced without material change in the Constitution of 1864, Article VI., sec. 26. In other respects, this section was entirely new.

County Officers.—See note on section 1 of this Article.

County Governments.—The counties are political subdivisions of the State, created by the constitution and laws for the local administration of the government, and vested with such powers, and no others, as are conferred upon them by law. Their governmental functions are exclusively judicial and administrative, and there is no county assembly or council vested with legislative powers. The boards of supervisors, succeeding to the administrative functions of the old county courts, are the principal organs of county government; but they can exercise no power except such as is delegated to them by the legislature. The provision that they shall fix the county levies gives them no independent power of assessment and taxation; it merely authorizes them to fix the amount of the levies, and assess them against the subjects of taxation prescribed by the legislature, and no species of property not taxable by legislative authority can be taxed by the boards of supervisors. The provision that they shall regulate and equalize the valuation of property is of doubtful import, but it cannot be construed as giving authority to change the assessors' books and prescribe new subjects of taxation different from those assessed by the State. Virginia & Tennessee R. R. Co. v. Washington County, 30 Gratt. 471; N. & W. R. R. Co. v. Supervisors, 87 Va. 521. See also B. & O. R. R. Co. v. Koontz, 77 Va. 698; S. V. R. R. Co. v. Supervisors, 78 Va. 269; S. & R. R. R. Co. v. Supervisors, 83 Va. 195; Prince George County v. A. M. & O. R. R. Co., 87 Va. 283; and N. Y. P. & N. R. R. Co. v. Supervisors, 92 Va. 661.

School Districts.

SEC. 3. Each magisterial district shall be divided into so many compactly located school districts as may be deemed necessary: provided, that no school district shall be formed containing less than one hundred inhabitants. In each school district there shall be elected or appointed annually one school trustee, who shall hold his office three years: provided, that at the first election held under this provision there shall be three trustees elected, whose terms shall be one, two, and three years, respectively.

Amendment November 1874, changing the original only by the substitution of "magisterial district" for "township." There is no similar provision in any previous constitution.

School districts are not required by this section to remain as originally laid off, but the legislature has power at any time to subdivide or rearrange them as the public interests may require. Pumphrey v. Brown, 77 Va. 569. School trustees are officers, and as such are required to take the oath of office before entering on their duties. Childrey v. Rady, 77 Va. 518.

SEC. 4. The general assembly, at its first session after the adoption of this constitution, shall pass such laws as may be necessary to give effect to the provisions of this article. But nothing in this article shall be construed as prohibiting the general assemby from providing by law for any additional officers in any city or county.

Section 5 of the Constitution as adopted. The original section 4, stricken out by amendment in 1874, was as follows:

Road Districts.

SEC. 4. Each township shall be divided into one or more road districts. In each road district there shall be elected annually one overseer of roads, under whose direction the roads shall be kept in repair, at the public expense, in a mode to be prescribed by law.

No previous constitution contains any provision similar to the present section 4, or to the omitted section.

The authority to provide for additional officers is impliedly given by the present section 4. *Ex parte* Bassitt, 90 Va. 679.

SEC. 5. Sheriffs shall hold no other office. They may be required by law to renew their security, and in default of so doing their offices shall be declared vacant. Counties shall never be made responsible for the acts of the sheriffs.

There is no similar provision in any previous constitution, except that Article VI., sec. 31, Constitution 1851, and Article VI., sec. 30, Constitution 1864, provided that "no person elected for two successive terms to the office of sheriff shall be re-eligible to the same office for the next succeeding term; nor shall he during his term of service, or within one year thereafter, be eligible to any political office."

This section precludes the sheriff from holding any other office, State or Federal, and his acceptance of any other office *ipso facto*

vacates the office of sheriff, without any judgment of amotion. Bunting v. Willis, 27 Gratt. 152; Shell v. Cousins, 77 Va. 328.

ARTICLE VIII.

EDUCATION.

SEC. 1. The general assembly shall elect, in joint ballot, within thirty days after its organization under this constitution, and every fourth year thereafter, a superintendent of public instruction. He shall have the general supervision of the public free school interests of the state, and shall report to the general assembly, for its consideration, within thirty days after his election, a plan for a uniform system of public free schools.

No previous constitution contains any provision on the subject of education except the provision of Article IV., sec. 24, Constitution 1851, and Article IV., sec. 22, Constitution 1864, that "one equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools."

SEC. 2. There shall be a board of education, composed of the governor, superintendent of public instruction, and attorney-general, which shall appoint and have power to remove, for cause and upon notice to the incumbents, subject to confirmation by the Senate, all county superintendents of public free schools. This board shall have, regulated by law, the management and investment of all school funds, and such supervision of schools of higher grades as the law shall provide.

See note on foregoing section.

A superintendent of schools cannot be removed from office except as provided by this section. Pendleton v. Miller, 82 Va. 390. The board of education being charged by this section with the management and investment of all school funds, it is not competent for the legislature to appropriate a part of these funds to a normal school to be managed by the trustees of that school. State Female Normal School v. Auditor, 79 Va. 233. Lewis, P., and Hinton, J., dissented. See also Hall's Free School Trustees v. Horne, 80 Va. 470.

SEC. 3. The general assembly shall provide by law, at its first session under this constitution, a uniform system of public free schools, and for its gradual, equal, and full introduction into all the counties of the state by the year 1876, or as much earlier as practicable.

See note on section 1 of this Article.

SEC. 4. The general assembly shall have power, after a full introduction of the public free school system, to make such laws as shall not permit parents and guardians to allow their children to grow up in ignorance and vagrancy.

See note on section 1 of this Article.

SEC. 5. The general assembly shall establish, as soon as practicable, normal schools, and may establish agricultural schools, and such grades of schools as shall be for the public good.

See note on section 1 of this Article.

Appropriations for the support of any school established under this section must be payable out of the general treasury or the permanent educational fund provided for by section 9 of this Article, and not out of the school funds. State Female Normal School v. Auditor, 79 Va. 233. Lewis, P., and Hinton, J., dissented.

SEC. 6. The board of education shall provide for uniformity of text-books and the furnishing of school-houses with such apparatus and library as may be necessary, under such regulations as may be provided by law.

See note on section 1 of this Article.

SEC. 7. The general assembly shall set apart, as a permanent and perpetual literary fund, the present literary funds of the state, the proceeds of all public lands donated by congress for public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the state by forfeiture, and all fines collected for offenses committed against the state, and such other sums as the general assembly may appropriate.

See note on section 1 of this Article.

Moneys belonging to the literary fund provided for by this section cannot be diverted to any other use. The fines referred to are those imposed by law as a punishment for crime, and do not embrace statutory penalties or forfeitures recoverable by civil action; but, even if such penalties and forfeitures were embraced, the payment of half of them to the informer, as part of the expense of recovery, is not an unlawful diversion of the part so paid. Express Co. v. Walker, 92 Va. 59. In Clark v. Tyler, 30 Gratt. 147, it was held that the Funding Act of March 30, 1871, providing that fines might be paid by coupons cut from State bonds issued under that act, did not violate this section, though by such payment the fines were in effect diverted from the

literary fund and applied to discharge the coupons. This case was overruled on this point in Greenhow v. Vashon, 81 Va. 336. See also Vashon v. Greenhow, 135 U. S. 135. In Commonwealth v. McCullough, 90 Va. 597, the Funding Act was held to be wholly void on account of its repugnancy to this and the following section.

SEC. 8. The general assembly shall apply the annual interest on the literary fund, the capitation tax provided for by this constitution for public free school purposes, and an annual tax upon the property of the state of not less than one mill nor more than five mills on the dollar, for the equal benefit of all the people of the state, the number of children between the ages of five and twenty-one years in each public free school district being the basis of such division. Provision shall be made to supply children attending the public free schools with necessary text-books in cases where the parent or guardian is unable, by reason of poverty, to furnish them. Each county and public free school district may raise additional sums by a tax on property for the support of the public free schools. All unexpended sums of any one year in any public free school district shall go into the general school fund for re-division the next year: provided, that any tax authorized by this section to be raised by counties or school districts shall not exceed five mills on a dollar in any one year, and shall not be subject to re-division, as hereinbefore provided in this section.

See note on section 1 of this Article.

The revenues dedicated by this section to the support of the public free schools must be applied for the equal benefit of all the people, the basis of division being the number of children between five and twenty-one years of age in each school district; and it cannot be applied differently, or diverted to any other purpose, as to support a normal school or assist a school which is not a part of the public school system. State Normal Free School v. Auditor, 79 Va. 233; Hall's Free School Trustees v. Horne, 80 Va. 470.

In Antoni v. Wright, 22 Gratt. 833; Clark v. Tyler, 30 Gratt. 147, and Williamson v. Massey, 33 Gratt. 237, it was held, Staples, J., dissenting, that the Funding Act of March 30, 1871, did not violate this section, in providing that all debts, dues and demands due the State, including those from which the school funds were derived, might be discharged by coupons detached from bonds issued under said Act; though, in effect, a discharge by this means of such debts, dues and demands was a diversion of a part of the school fund for the purpose of paying the interest on the State

debt. These cases were overruled in Greenhow v. Vashon, 81 Va. 336, and Commonwealth v. McCullough, 90 Va. 597; and in the latter case the Funding Act, which in the former case had been held to be void in so far as it was inconsistent with this and the preceding section, was held to be wholly unconstitutional, inasmuch as the valid and invalid parts of it were so connected that they could not be separately enforced.

The provision that all unexpended sums of any one year, in any public free school district, shall go into the general school fund for redivision the next year, applies only to unexpended sums derived from the general State fund; and does not apply to such sums as are raised by local taxation within the several counties or school districts. It is the intention of this section that all moneys raised by local taxation for school purposes shall be expended within the school district where they are raised; and a levy by a board of supervisors, imposed on railroad property in a county as a whole, without reference to what part of it is located in the several districts, so as to show the amount levied for each district, in its results defeats this intention and is void. N. Y. P. & N. R. R. Co. v. Supervisors, 92 Va. 661.

The right expressly given to the counties by this section to levy a property tax for school purposes cannot be taken away from them, and a law exempting any district from the county school tax is void. Robertson v. Preston, 97 Va. 296.

It is competent for the legislature to incorporate a high school, which shall be a part of the free school system; and a provision that a part of the county school fund may be appropriated to the support of such school does not violate the limitation imposed by this section in respect to the disposition of the annual tax for free school purposes. Supervisors v. Bedford High School, 92 Va. 292.

SEC. 9. The general assembly shall have power to foster all higher grades of schools under its supervision, and to provide for such purpose a permanent educational fund.

See note on section 1 of this Article.

In Supervisors v. Bedford High School, 92 Va. 292, it was

held that the Bedford High School, established by Act of March 3, 1894; was one of the class of schools of higher grade provided for by this section; and that it was competent for the legislature to incorporate said school, the terms of incorporation being such as to make it a part of the free school system.

SEC. 10. All grants and donations received by the general assembly for educational purposes shall be applied according to the terms prescribed by the donors.

See note on section 1 of this Article.

SEC. 11. Each city and county shall be held accountable for the destruction of school property that may take place within its limits by incendiaries or open violence.

See note on section 1 of this Article.

SEC. 12. The general assembly shall fix the salaries and prescribe the duties of all school officers, and shall make all needful laws and regulations to carry into effect the public free school system provided for by this article.

See note on section 1 of this Article.

ARTICLE IX.

MILITIA.

SEC. 1. The militia of this state shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such persons as hereafter may be exempted by the laws of the United States or of this state; but those who belong to religious societies whose tenets forbid them to carry arms shall not be compelled to do so, but shall pay an equivalent for personal service; and the militia shall be organized, armed and equipped, and trained as the general assembly may provide by law.

No previous constitution contains any provision similar to this or the following section.

SEC. 2. The legislature shall provide by law for the encouragement of volunteer corps of the several arms of the service, which shall be classed as the active militia; and all other militia shall be classified as the reserve militia, and shall not be required to muster in time of peace.

See note on section 1 of this Article.

ARTICLE X.

TAXATION AND FINANCE.

SEC. 1. Taxation, except as hereinafter provided, whether imposed by the state, county, or corporate bodies, shall be equal and uniform, and all property both real and personal, shall be taxed in proportion to its value, to be ascertained as prescribed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value.

The Constitution of 1851, Article IV., sec. 22, provided as follows: "Taxation shall be equal and uniform throughout the commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law." The Constitution of 1864, Article IV., sec. 23, contains the same provision, omitting the exception in regard to slaves. The first two constitutions contained no provision on taxation or finance.

Power of Taxation.—The legislature alone has the power to provide when, how, and for what purposes a tax may be laid, and to prescribe the subjects of taxation; and the constitutional provisions in respect to taxation can be carried into effect only by legislative enactments, without which there can be no taxation. Supervisors v. Tallant, 96 Va. 723; Willis v. Commonwealth, 97 Va. 667. The counties and corporate bodies have only such powers of taxation as may be conferred upon them by the legislature, and in the exercise of these powers they are subject to all the constitutional restrictions imposed by this section. Norfolk City v. Ellis, 26 Gratt. 224. See note on Article VII., sec. 2.

Equality and Uniformity.—In spite of the general terms of the provision that taxation shall be equal and uniform, the cases go far towards deciding, if they do not actually decide, that this provision applies only to taxation on property for purposes of revenue. Slaughter v. Commonwealth (Constitution 1851, license tax), 13 Gratt. 767; Eyre v. Jacob (Constitution 1851), 14 Gratt. 422; Commonwealth v. Moore & Goodsons (license tax), 25 Gratt. 951; Norfolk v. Ellis (local assessment), 26 Gratt. 224; Miller's Ex'or v. Commonwealth, 27 Gratt. 110; Helfrick's Case (license tax), 29 Gratt. 844; Peters v. Lynchburg, 76 Va. 927; R. & A. R. R.

Co. v. Lynchburg (local assessment), 81 Va. 473; Davis v. Lynchburg (local assessment), 84 Va. 861. This view is strongly criticized in the opinion in Norfolk v. Camberlain (local assessment), 89 Va. 196.

If the provision for equality and uniformity is broad enough to include all subjects of taxation, it can be applied only so far as practicable; and, if a given subject be susceptible of only a modified application of the rule, it must receive this, and not be rejected as a subject of taxation, because the rule cannot be applied with perfect precision, to its whole extent, and in all its results.

In respect to licenses, the requirement of equality and uniformity may be carried out by a uniform tax on licenses to persons engaged in the same business, under the same conditions and circumstances, and a difference therein will justify a discrimination in the tax. Slaughter's Case, and Com'lth v. Moore & Goodsons, *supra*. In Ould & Carrington v. Richmond, 23 Gratt. 464, an ordinance imposing a license tax on lawyers, in classes, and apportioning the tax according to the value of the privilege taxed, was held to be valid. See also Lewellen v. Lockharts, 21 Gratt. 570; Hirsh's Case, Id. 785; Norfolk v. Norfolk Landmark Co., 95 Va. 564; and other cases on license taxes cited above.

In respect to assessments for local improvements, they must be made in accordance with the maxim that he who receives the benefit ought to bear the burden. Such assessments, therefore, should be apportioned according to some equitable rule, so that no person assessed shall bear more than his just share of the burden; but, exact equality and uniformity being unattainable in taxation, it is not necessary that in every instance the benefit should be equal to the burden; and an inequality occurring in the application of a uniform rule of apportionment does not make the assessment invalid. Norfolk v. Ellis, 26 Gratt. 224; Sands v. Richmond, 31 Gratt. 571; Green v. Ward, 82 Va. 324; Asbury v. Roanoke, 91 Va. 562; Violett v. Alexander, 92 Va. 561; Norfolk v. Young, 2 Va. Sup. Ct. Rep. 17; and other cases on local assessments cited above.

The rule of equality and uniformity does not require that all

the subjects of taxation shall be assessed in the same manner. The valuation is to be made as prescribed by law, and the requirement of equality and uniformity is satisfied by such regulations as will secure an equal rate and a just valuation, without reference to the method of valuation; and, in order to be uniform, a tax need not be imposed and assessed upon all property by the same agency or officer. S. V. R. R. Co. v. Supervisors, 78 Va. 269; Iverson Brown's Case, 91 Va. 762.

Taxation According to Value.—The provision that all property shall be taxed in proportion to its value applies only to direct taxes on property. See cases cited in first paragraph of note on "Equality and Uniformity."

A collateral inheritance tax is not a tax on property, but merely on the civil right or privilege of succeeding to property on the death of the owner, and the provision for *ad valorem* taxation does not apply to it. Eyre v. Jacob, 14 Gratt. 422; Peters v. Lynchburg, 76 Va. 927; Schoolfield's Ex'or v. Lynchburg, 78 Va. 366.

Exemption from Taxation.—In respect to the provision that "all property, both real and personal, shall be taxed in proportion to its value," it is a question of the greatest importance whether it means that all property, without exception, shall be so taxed, or only such property as may be selected by the legislature for taxation. In other words, must all property be so taxed, or may the legislature tax or exempt from taxation according to its discretion? In Williamson v. Massey, 33 Gratt. 237, Moncure, P., absent and Staples, J., dissenting, it was held that the obligations of the State might be exempted; but, of the three judges concurring, only two, Judges Anderson and Christian, rested the decision on the broad ground that the legislature has unrestricted power to exempt, while the third, Judge Burks, concurred in the decision solely on the ground that the State has the right to exempt its own obligations from taxation, as an incident of its power to contract and provide means for the discharge of its contracts; but he added: "I am not prepared, however, to say whether or not the power of exemption under the Constitution is without limitation,

and extends to property *generally*, within the uncontrolled discretion of the legislature. The question is a very grave one, and in the view I take need not be decided in the present case." In Danville v. Shelton, 76 Va. 325, decided by the same three judges, Judges Christian and Anderson adhered to their opinion, while Judge Burks again concurred only in the results of the decision, which did not depend on the question of the power of the legislature to exempt from taxation. Both of these cases are criticised in Whiting v. West Point, 88 Va. 905, in which it was held that, whatever might be the power of the State to exempt from taxation, its local agencies of government have no such power, as an implied incident of the power to tax. The question whether the legislature itself has the power to exempt from taxation is still an open one, though it would seem from Supervisors v. Tallant, 96 Va. 723, and Willis v. Com'lth, 97 Va. 667, that the legislature, in prescribing the subjects of taxation may make some property taxable, while other property, in the absence of legislative provision for its taxation, cannot be taxed; which, in effect, is equivalent to the power to exempt from taxation.

Double Taxation.—A corporation is a legal entity distinct from its stockholders, and the capital stock of the company may be taxed, and a tax also laid on the shares of stock in the hands of the individual holders, and such taxation is not double taxation. State Bank v. Richmond, 79 Va. 113; Com'lth v. Charlottesville P. B. & L. Co., 90 Va. 790; Union Bank v. Richmond, 94 Va. 316; Allen v. Com'lth, 2 Va. S. C. Rep. 79; People's National Bank v. Marye (U. S. Cir Ct., Eastern District of Virginia), 7 Va. Law Reg. 47. Nor is it double taxation to impose a license-tax on the privilege of carrying on a business and at the same time to tax the property used in the business. Morgan v. Com'lth, 2 Va. S. C. Rep. 177.

SEC. 2. No tax shall be imposed on any of the citizens of this state for the privilege of taking or catching oysters from their natural beds with tongs in the waters thereof; but the amount of sales of oysters so taken by any citizen in any one year, may be taxed at a rate not exceeding the rate of taxatiom imposed upon any other species of property.

No previous constitution contains any similar provision.

This section is not violated by a statute which requires each tongman to make a weekly return of sales, and imposes a tax on such sales equal to the tax imposed on any other species of property, but allows such tongman to pay a sum certain, fixed by the statute, in lieu of such tax, the alternative of paying such sum being simply a privilege, which the tongman may accept or decline. Iverson Brown's Case, 91 Va. 762.

SEC. 3. The legislature may exempt all property used exclusively for state, county, municipal, benevolent, charitable, educational, and religious purposes.

There is no similar provision in any previous constitution.

It is uncertain whether or not this section restricts the power of the legislature to exempt from taxation. In Williamson v. Massey, 33 Gratt. 237, Judges Anderson and Christian were of opinion that it does not, but that it merely authorizes exemptions in the cases specified, without forbidding them in others. This construction not only violates the familiar rule, *expressio unius exclusio est alterius;* but, as the Constitution is a restraining and not an enabling instrument, and there was no occasion for a grant of power to the legislature, it makes this section entirely useless and inoperative. If section 1 of this Article was intended to prohibit exemptions, this section was intended to remove the prohibition as to the kinds of property specified. The question, however, is unsettled. See note on section 1 of this Article.

The power to exempt property used for the purposes specified carries with it the power to exempt property the proceeds of which are used for those purposes; and where the purpose is charitable, it is not essential that the charity be public or universal; it may extend only to the members of a charitable association, or the families of deceased members. Petersburg v. Petersburg &c. Association, 78 Va. 43.

SEC. 4. The general assembly may levy a tax on incomes in excess of six hundred dollars per annum, and upon the following licenses—viz: the sale of ardent spirits, theatrical and circus companies, menageries, jugglers, itinerant pedlars, and all other shows and exhibitions for which an entrance fee is required; commission merchants, persons selling by sample, brokers and pawnbrokers, and all other business which cannot be reached by the *ad valorem* system. The capital invested in all business operations shall be assessed and taxed as other property. Assessments upon all stock shall be according to the market value thereof.

Article IV., sec. 25, Constitution 1851, was as follows: "The general assembly may levy a tax on incomes, salaries and licenses; but no tax shall be levied on property from which any income so taxed is derived, or on the capital invested in the trade or business in respect to which the license so taxed is issued." The same provision is contained in Article IV., sec. 23, Constitution 1864.

The license tax provided for by this section was not intended to apply to any business except such as cannot be reached by the *ad valorem* system; but whether a business can or cannot be reached by that system is a question primarily for the legislature, and its determination of the question will not be held erroneous unless it is manifestly so. Morgan v. Commonwealth, 2 Va. Sup. Ct. Rep. 177. See also Commonwealth v. Moore & Goodsons, 25 Gratt. 957, and Danville v. Shelton, 76 Va. 325. It has been held competent to impose a license tax on the business of keeping a billiard saloon, Lewellen v. Lockharts, 21 Gratt. 570; on the business of a junk dealer, Hirsh's Case, 21 Gratt. 785; on the business of practicing law, Ould & Carrington v. Richmond, 23 Gratt. 464; on the business of a general merchant, Commonwealth v. Moore & Goodsons, *supra;* and on the business of fishing in the waters of the Commonwealth, Morgan v. Commonwealth, *supra.*

Obviously the discretionary power of the legislature, and of the counties and corporate bodies, acting under legislative authority, to substitute the license system of taxation for the *ad valorem* system, is a power which may be greatly abused; and it should be so limited as to prevent a virtual exemption from taxation under the cover of a license-tax.

Where a license tax is imposed the property used in carrying on the business may also be taxed. Morgan v. Commonwealth, *supra.* But the provision that "the capital invested in all business operations shall be assessed and taxed as other property," has not been construed to require capital to be so taxed when it is invested in a business on which a license tax is imposed. Lewellen v. Lockharts, 21 Gratt. 570. See also Supervisors v. Tallant, 96 Va. 723. Apparently this provision applies only when the business is taxed under the *ad valorem* system.

As to whether the principle of equality and uniformity applies to license-taxes, see note on section 1 of this Article.

SEC. 5. The general assembly may levy a tax, not exceeding one dollar per annum, on every male citizen who has attained the age of twenty-one years, which shall be applied exclusively in aid of public free schools; and counties and corporations shall have power to impose a capitation tax, not exceeding fifty cents per annum, for all purposes.

Article IV., sec. 24, Constitution 1851, and Article IV., sec. 22, Constitution 1864, are as follows: "A capitation tax, equal to the tax assessed on land at the value of $200, shall be levied on every white male inhabitant who has attained the age of twenty-one years; and one equal moiety of the capitation tax upon white persons shall be applied to purposes of education in primary and free schools; but nothing herein contained shall prevent exemptions of taxable polls in cases of bodily infirmity."

The corporations authorized by this section to levy a capitation tax are cities having separate governments, and not subject to taxation for county purposes. The towns and subdivisions of counties and cities cannot be authorized to levy such a tax. Robertson v. Preston, 97 Va. 296.

In Proffit v. Anderson (Va.), 20 S. E. 887, a *per curiam* decision, not published in the official reports, it was held, Lewis, P., and Lacy, J., dissenting, that a county road law authorizing the road overseer of each road district to require all able-bodied male citizens between the ages of sixteen and sixty years to do two days work on the roads each year under penalty of a fine of $1, was a capitation tax, in the form of a *per capita* requisition for road service, and in excess of the tax authorized by this section, and that the law imposing the same was void. See editorial comment on this case by Prof. W. M. Lile in 5 Va. Law Reg. 564.

In the case just cited, and in Robertson v. Preston, *supra*, it was held that the provision that "counties and corporations shall have power to impose a capitation tax, not exceeding fifty cents per annum, for all purposes," confers this power directly on the counties and corporations, and that the power is not subject to control by the legislature.

The fund dedicated by this section to the support of public free

schools cannot be diverted to any other purpose. See notes on Article VIII., secs. 7 and 8.

SEC. 6. The general assembly shall provide for a reassessment of the real estate of this state in the year 1869, or as soon thereafter as practicable, and every fifth year thereafter: provided, in making such assessment no land shall be assessed above or below its value.

There is no similar provision in any previous constitution.

The owner of property is entitled to an opportunity to be heard on the question of the assessment of his property for taxation; otherwise the tax or levy would be exacted of him without due process of law, and in violation of the Fourteenth Amendment of the Constitution of the United States. Violett v. Alexandria, 92 Va. 561; Heth v. Radford, 96 Va. 275. But where the officer making the assessment does not act judicially, but ministerially, as when bank shares are required to be assessed according to their market value, as reported to the officer by the banks themselves, and the amount of the tax is fixed by statute, it is not necessary that the shareholders should have notice and an opportunity to be heard. Peoples' National Bank v. Marye (U. S. Circuit Court, Eastern District of Va.), 7 Va. Law Reg. 47.

SEC. 7. No debt shall be contracted by this state except to meet casual deficits in the revenue, to redeem a previous liability of the state, to suppress insurrection, repel invasion, or defend the state in time of war.

This section is taken from Article IV., sec. 29, Constitution 1864, prior to the adoption of which there was no constitutional limitation on the power of the State to contract debts.

SEC. 8. The general assembly shall provide by law a sinking fund, to be applied solely to the payment and extinguishment of the principal of the state debt, which sinking fund shall be continued until the extinguishment of such state debt; and every law hereafter enacted by the general assembly creating a debt or authorizing a loan shall provide a sinking fund for the payment of the same.

Article IV., sec. 29, Constitution 1851, provided for a sinking fund to be applied to the State debt as it existed January 1, 1852; and provided that no debt should thereafter be contracted by the State, without providing for annual additions to the sinking fund in excess of the interest on such debt. The Constitution of 1864 contained no provision for a sinking fund.

SEC. 9. The unfunded debt shall not be funded or redeemed at a value exceeding that established by law at the time said debt was contracted, nor shall any discrimination hereafter be made in paying the interest on state bonds which shall give a higher actual value to bonds held in foreign countries over the same class of bonds held in this country.

There is no similar provision in any previous constitution.

SEC. 10. No money shall be paid out of the state treasury except in pursuance of appropriations made by law; and no appropriation shall ever be made for the payment of any debt or obligation created, in the name of the state of Virginia, by the usurped and pretended state authorities assembled at Richmond during the late war; and no county, city, or corporation shall levy or collect any tax for the payment of any debt created for the purpose of aiding any rebellion against the state or against the United States.

The provision that no money shall be paid out of the State Treasury, except in pursuance of appropriations made by law, is taken, with two or three verbal alterations, from Article IV., sec. 26, Constitution 1851, and Article IV., sec. 24, Constitution 1864. The rest of the section is taken in substance from Article IV., sec. 27, Constitution 1864.

Under this section, which operates as a restraint on the courts as well as on the legislature, it was held that there could be no recovery on a claim for supplies furnished to the penitentiary during the Civil War. Commonwealth v. Chalkley, 20 Gratt. 404; or on State bonds issued under act of the Richmond legislature passed at its session of 1861-62. Meredith v. Rogers, 24 Gratt. 172. But in Dinwiddie County v. Stuart, 28 Gratt. 526, and Pulaski County v. Stuart, 28 Gratt. 872, it was held that contracts made by the counties under legislative authority during the war for the purchase of salt for the use of their inhabitants created valid and enforceable obligations.

See Marye v. Board of Agriculture, 96 Va. 591, in which the court declined to require a payment to be made out of the public treasury, on the ground that there had been no appropriation made by law for the purpose.

SEC. 11. On the passage of every act which imposes, continues, or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the vote shall be determined by ayes and noes, and the names of the persons voting for and against the same shall be

entered on the journals of the respective houses, and a majority of all the members elected to each house shall be necessary to give it the force of law.

Same as Article IV., sec. 27, Constitution 1851 and Article IV., sec. 25, Constitution 1864, except the omission of the words "a tax, or creates a debt or charge, or makes, continues, or revives," which in those constitutions were inserted between "revives" and "any appropriation;" and in those constitutions the vote was required to be determined by "yeas and nays" instead of "ayes and noes."

An act providing for the sale of lands, purchased by the State for delinquent taxes, does not impose, continue, or revive any appropriation of public or trust money, or release, commute, or discharge any claim or demand of the State, and a recorded vote on its passage was not necessary to its validity. Christian v. Taylor, 96 Va. 503. But in Lambert v. Smith, 2 Va. Sup. Ct. Rep. 221, it was held that the act of March 5, 1900, providing for the appointment of commissioners of valuation and defining their duties, carried with it an appropriation of public money, and was invalid because the vote on its passage was not taken and entered as provided by this section.

See note on Article V., sec. 10.

SEC. 12. The credit of the state shall not be granted to or in aid of any person, association or corporation.

The Constitutions of 1851 and 1864, in sections 28 and 26 respectively of Article IV., provided that "the general assembly shall not pledge the faith of the state, or bind it in any form, for the debts or obligations (debt or obligation, Constitution 1864) of any company or corporation."

The prohibitions of this section and of sections 14 and 15 following apply only to the State, and not to its political subdivisions, the counties and corporate bodies. Powell v. Supervisors, 88 Va. 707; Supervisors v. Randolph, 89 Va. 614.

That these prohibitions do not extend to the counties and corporate bodies, and that there are no constitutional restrictions on the power of the local agencies of government to contract debts is one of the serious defects of the present Constitution. Of

the evils resulting from the absence of such restrictions Judge Dillon, in section 12 of his work on Municipal Corporations, speaks as follows: "Some of the evil effects of municipal rule have arisen from legislation unwisely conferring upon municipalities, at the suggestion often of interested individuals or corporations, powers foreign to the nature of these institutions, and not necessary to enable them to discharge the appropriate functions and duties of local administration. Among the most conspicuous instances of such legislation may be mentioned the power to aid in the building of railways, to incur debts, often without any limit or any which is effectual, and to issue negotiable securities. The result has too often been that debts are incurred so large that they press with disastrous weight on the municipality and its citizens. Extraordinary and extra-municipal powers have been too often incautiously or unwisely granted, and the charters or constituent acts carelessly worded and loosely construed. The remedy suggested by experience consists, in part, in constitutional provisions prohibiting the granting of special charters, and requiring all municipal corporations to be organized under general laws. The legislature ought also to be prohibited from allowing municipal corporations to engage in extra-municipal projects, or to incur debts or levy taxes for such purposes. The powers granted to such corporations, and especially the power to levy taxes, ought to be more carefully defined and limited and should embrace such objects only as are necessary for the health, welfare, safety, and convenience of the inhabitants. The amount of indebtedness that may be incurred, even for municipal purposes, ought also to be limited beyond the power to be evaded."

SEC. 13. No scrip, certificate or other evidence of state indebtedness shall be issued except for the redemption of stock previously issued, or for such debts as are expressly authorized in this constitution.

There is no similar provision in any previous constitution except that Article IV., sec. 31, Constitution 1851, provided that: "The general assembly shall not contract loans or cause to be issued certificates of debts or bonds of the state, irredeemable for a period greater than thirty-four years."

SEC. 14. The state shall not subscribe to or become interested in the stock of any company, association or corporation.

Article IV., sec. 29, Constitution 1864, contains the following provision: "If the state becomes a stockholder in any corporation or association for purposes of internal improvements, such stock shall be paid for at the time of subscription, or a tax shall be levied for the ensuing year sufficient to pay the subscription in full." Under previous constitutions there was no limitation on the power of the State to become interested in such associations or corporations.

See note on section 12 of this Article.

SEC. 15. The state shall not be a party to or become interested in any work of internal improvement, nor engage in carrying on any such work, otherwise than in the expenditure of grants to the state of land or other property.

There is no similar provision in any previous constitution except Article IV., sec. 29, Constitution 1864, referred to in note on previous section, limiting the power of the State to become a stockholder in internal improvement companies.

See note on section 12 of this Article.

SEC. 16. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

There is no similar provision in any previous constitution, but Article IV., sec. 27, Constitution 1851, and Article IV., sec. 25, Constitution 1864, provided that on the passage of any act imposing, continuing, or reviving a tax, or creating a debt, the vote should be determined by yeas and nays, and should be recorded, and that a majority of all the members elected to each House should be necessary to give it the force of a law.

A tax is sufficiently stated under this section if it is fixed at "an amount equal to the amount of tax that may be levied by the State on any other species of property"; and where an amendatory act, or an act substituting a new section for a section of the Code, merely continues a tax without stating the object to which it is to be applied, it will be a compliance with the requirement that the object of a tax shall be stated, if it is stated in the original act or

section of the Code. The object of a tax is sufficiently defined by the statement that it is "to obtain revenue." Iverson Brown's Case, 91 Va. 762. In Morgan v. Commonwealth, Va. S. C. Rep. 177, it was held by a majority of the court that a law imposing a license tax on fishing in the waters of the commonwealth, sufficiently stated the object of the tax in providing that the money collected from it "shall be paid to the auditor of public accounts and accounted for in the general oyster fund of the state, but shall in nowise be considered a part thereof, or in any way used to defray the expense of said oyster commission."

This section might more appropriately be placed in Article V., with other provisions relating to legislation. See note on section 5 of that Article.

SEC. 17. The state shall not assume any indebtedness of the county, borough, nor city, nor lend its credit to the same.

There is no similar provision in any previous constitution.

SEC. 18. A full account of the state indebtedness and an accurate statement of receipts and expenditures of public money shall be attached to and published with its laws passed at every regular session of the general assembly.

Article IV., sec. 26, Constitution 1851, and Article IV., sec. 24, Constitution 1864, provided that "a statement of receipts, disbursements, appropriations, and loans shall be published after the adjournment of each session of the general assembly with the acts and resolutions thereof."

When an amendment to the Constitution is adopted, the proclamation of the governor announcing the fact might well be required to be published with the acts of the next session of the legislature; and it would be convenient for the acts of each session to contain a list of the members of the legislature at that session, showing their residence and party affiliation.

As a matter of arrangement, provisions in respect to the publication of the laws would more appropriately be included in Article V. immediately after the clauses relating to legislation.

SEC. 19. The general assembly shall provide by law for adjusting with the state of West Virginia the proportion of the public debt of Virginia proper to be borne by the state of Virginia and West Virginia, and shall provide that such sum as shall be received from West Virginia shall be applied to the payment of the public debt of the state.

Article IV., sec. 27, Constitution 1864, also prescribed that the General Assembly should adjust with the State of West Virginia the proportion of the public debt of Virginia proper to be borne by the States of Virginia and West Virginia respectively; and it authorized the General Assembly, in conjunction with the State of West Virginia, to sell all lands and property of every description, including all stocks and other interests owned and held by the State of Virginia in banks, works of internal improvement, and other companies at the time of the formation of the State of West Virginia; but it provided that the State should not be bound by any ordinance of the Wheeling Convention of June 11, 1861, adjusting the public debt between the States of Virginia and West Virginia.

This section, as stated in note on section 7 of this Article, recognizes the obligation of the State debt.

SEC. 20. No other or greater amount of tax or revenue shall at any time be levied than may be required for the necessary expenses of the government or to pay the existing indebtedness of the state.

There is no similar provision in any previous constitution.

This section also recognizes the obligation of the State debt.

SEC. 21. The liability to the state of any incorporated company or institution to redeem the principal and pay the interest of any loan heretofore made by the state to such company or institution, shall not be released or commuted.

This section, except the words "or commuted," is taken from Article IV., sec. 28, Constitution 1851, and Article IV., sec. 26, Constitution 1864.

Usury.

Upon debts hereafter contracted, it shall be lawful to receive any rate of interest not exceeding twelve per centum per annum, which may be agreed upon by the parties and be specified in the bond, note or other writing evidencing the debt. When there is no such agreement, the rate of interest shall be six per centum per annum for the use and forbearance of every hundred dollars.

The foregoing clause, which was the final clause of this article of the Constitution as adopted, was stricken out by amendment in 1872.

ARTICLE XI.

MISCELLANEOUS PROVISIONS.

Homestead and Other Exemptions.

SEC. 1. Every householder or head of a family shall be entitled, in addition to the articles now exempt from levy or distress for rent, to hold exempt from levy, seizure, garnisheeing, or sale under any execution, order or other process issued on any demand for any debt heretofore or hereafter contracted, his real and personal property, or either, including money and debts due him, whether heretofore or hereafter acquired or contracted, to the value of not exceeding two thousand dollars, to be selected by him: provided, that such exemption shall not extend to any execution, order or other process issued on any demand in the following cases:

1st. For the purchase price of said property or any part thereof.

2d. For services rendered by a laboring person or a mechanic.

3d. For liabilities incurred by any public officer or officer of a court, or any fiduciary, or any attorney at law, for money collected.

4th. For a lawful claim for any taxes, levies or assessments accruing after the first day of June, 1866.

5th. For rent hereafter accruing.

6th. For the legal or taxable fees of any public officer or officers of a court hereafter accruing.

Former constitutions contained no provision for an exemption, but by Act of April 29, 1867, a homestead in real estate was allowed, to contain not more than one hundred and sixty acres, nor to exceed twelve hundred dollars in value, upon which the person claiming the exemption was required to reside. This act was abrogated by section 6 of this Article.

The provisions of this Article appear not to be self-executing, and the exemption provided for depends on legislative action, and must be acquired according to regulations and conditions prescribed by the legislature in conformity with the fifth section following. See article by Prof. M. P. Burks on "Homestead Exemptions," 2 Va. Law Reg. 167.

Who May Claim Exemption.—The exemption may be claimed by a "householder or head of a family." These are mutually explanatory and interchangeable terms, and signify one who occupies such a relationship towards persons living with him that they have a legal or moral right to look to him for support. Calhoun v. Williams, 32 Gratt. 18. But since the exemption is for the benefit of the householder as well as of his family, if his family

dies leaving him the sole survivor, the exemption, if acquired while he was a householder, continues for his benefit. Wilkinson v. Merrill, 87 Va. 513, overruling Calhoun v. Williams, *supra*, on this point. By legislative authority, moreover, the exemption, if claimed by the householder, may be continued after his death for the benefit of his widow and minor children; or, if he died without having claimed it, they may be authorized to claim it in his estate. But the exemption applies only as against creditors, and if he died leaving no debts there can be no exemption, and his heirs take his estate subject to the dower and distributive rights of his widow. Hatorf v. Wellford, 27 Gratt. 356; Helm v. Helm, 30 Gratt. 404.

The exemption cannot be claimed by one who is not a citizen of the State; but the privilege is not lost by absence from the State without a change of domicile, and the burden of proving a change of domicile, is on him who alleges it. Lindsay v. Murphy, 76 Va. 428.

Where a fraudulent conveyance is annulled at the suit of creditors, the grantor, if a householder, is not estopped from claiming his exemption in the property conveyed. Shipe v. Repass, 27 Gratt. 716; Boynton v. Neal, 31 Gratt. 456; Marshall v. Sears, 79 Va. 49; Hatcher v. Crewe, 83 Va. 371; Mahoney v. James, 94 Va. 176.

When the privilege has been once fully exercised it is exhausted, but an original claim may be supplemented by additional claims until the aggregate equals two thousand dollars. Oppenheimer v. Howell, 76 Va. 218; Hatcher v. Crewe, 83 Va. 371.

Scope of the Exemption.—The exemption applies by the terms of this section against "any demand for any debt heretofore or hereafter contracted," except the classes of debts named in the proviso; but in the Homestead Cases, 26 Gratt. 266, the provision for an exemption, in so far as it was retroactive and applied to debts contracted before the Constitution went into operation, was held to be invalid on the ground that it impaired the obligation of such debts. See also Russell v. Randolph 26 Gratt. 705.

The exemption applies only against contractual obligations, and

does not apply against a fine imposed for violation of the penal laws, Whiteacre v. Rector, 29 Gratt. 714; or against a demand for damages for a breach of promise to marry, which is not a debt contracted, but a *quasi* tort, Burton v. Mill, 78 Va. 468.

Under the first clause of the proviso, property not paid for cannot be held exempt from liability for the purchase price; and, when such property is embraced with other property in a homestead deed, the *onus* of distinguishing between the two classes of property is on the person claiming the exemption, and if he fails to distinguish between them the deed will be held void in favor of creditors as to all the property embraced in it. Rose v. Sharpless, 33 Gratt. 153. *Quaere*, can the exemption be claimed in a shifting stock of goods?

The term "laboring man" in the second clause of the proviso includes a mail carrier. Farinholt v. Luckhard, 90 Va. 936. It is now provided by statute that this term shall include all householders who receive wages for their services. Acts 1887-88 p. 423.

The debts excepted from the exemption in the third clause of the proviso, namely, "liabilities incurred by any public officer, &c.," embrace the liability of a collector of taxes and of the sureties on his official bond. Com'lth v. Ford, 29 Gratt. 683.

Until the period of exemption expires creditors cannot acquire liens on the exempted property, and the householder may alienate the same free from the lien of judgments recovered, or executions or other process sued out against him. Williams v. Watkins, 92 Va. 680. But the lien of a judgment recovered against a householder before the exemption is claimed is not displaced by the exemption deed; and though it cannot be enforced during the continuance of the exemption, when the exemption ceases, it has priority over a subsequent deed of trust. Blose v. Bear, 87 Va. 177.

Expiration of the Exemption.—After the expiration of the exemption the property exempted may be subjected for debts of the householder, Hanby v. Henritze, 85 Va. 177; but creditors cannot require bond to be given for the forthcoming of the *corpus*

of the homestead at the expiration of the homestead period. Mahoney v. James, 94 Va. 176. But see Clendenning v. Conrad, 91 Va. 410.

SEC. 2. The foregoing section shall not be construed as subjecting the property hereby exempted, or any portion thereof, to any lien by reason of any execution levied on property which has been subsequently restored to the defendant, or judgment rendered or docketed on or after the 17th of April, 1861, and before the 2d day of March, 1867, for any debt contracted previous to the 4th day of April, 1865, except debts of the character mentioned in either of the above first three exceptions.

The "property hereby exempted" is the property selected and set apart by the householder by his homestead deed; and is the same property referred to in the following section as the "property aforesaid." White v. Owen, 30 Gratt. 43.

SEC. 3. Nothing contained in this article shall be construed to interfere with the sale of the property aforesaid, or any portion thereof, by virtue of any mortgage, deed of trust, pledge, or other security thereon.

The words "any mortgage, deed of trust, &c.," embrace all mortgages or other securities whether given before or after the deed of homestead, and whether given for antecedent or subsequent debts. White v. Owen, 30 Gratt. 43. In this case "other security" was said to mean a security of like character with mortgages, deeds of trust and pledges, previously mentioned, that is, a security created by the act of the householder himself; but in Kennerly v. Swartz, 83 Va. 704 the court, making no reference to White v. Owen, held that a judgment recovered against the debtor before he had acquired the status of a householder is a security within the meaning of this section, and that the lien of the judgment is not displaced by the exemption deed, but is paramount to it.

SEC. 4. The general assembly is hereby prohibited from passing any law staying the collection of debts, commonly known as "stay laws;" but this section shall not be construed as prohibiting any legislation which the general assembly may deem necessary to fully carry out the provisions of this article.

A law requiring an officer selling personal property for a debt contracted before April 10, 1865, to sell on a credit of twelve months, when requested by the debtor, is not a stay law within the meaning of this section. Garland v. Brown, 23 Gratt. 173.

SEC. 5. The general assembly shall, at its first session under this constitution, prescribe in what manner and on what conditions the said householder or head of a family shall thereafter set apart and hold for himself and family a homestead out of any property hereby exempted, and may, in its discretion, determine in what manner and on what conditions he may thereafter hold, for the benefit of himself and family, such personal property as he may have, and coming within the exemption hereby made. But this section shall not be construed as authorizing the general assembly to defeat or impair the benefits intended to be conferred by the provisions of this article.

This section makes it incumbent on the legislature to prescribe in what manner and on what conditions the exemption may be claimed; and, unless the regulations and conditions prescribed by the legislature are complied with, or, it would seem, if no regulations and conditions are prescribed, there can be no exemption. There is no limitation on the power of the legislature except that it may not defeat or impair the benefits intended to be conferred by this section. Wray v. Davenport, 79 Va. 19. It may authorize a waiver of the exemption, Reed v. Union Bank, 29 Gratt. 719; Linkenhoker v. Detrick, 81 Va. 44; and it may provide that the real estate set apart as exempt shall not be mortgaged, encumbered, or aliened by the householder, if a married man, except by the joint deed of himself and his wife, and in accordance with this provision a deed by the husband alone conveying such property is wholly void. Va. & Tenn. Coal & Iron Co. v. McClelland, 2 Va. Sup. Ct. Rep. 366.

Prof. M. P. Burks, in his article on Homestead Exemption, 2 Va. Law Reg. 167, points out that a distinction appears to be made in this section between "a homestead" and an exemption in personal property, it being made compulsory on the legislature to provide for a homestead, while it is left entirely discretionary as to any provision for holding personal property exempt.

While the legislature cannot impair or abridge the right of exemption secured by the Constitution, it may enlarge such right and confer it upon persons not specifically mentioned in the Constitution; and in Hatorf v. Wellford, 27 Gratt. 356, it was held that the legislature had the power to confer the right upon the widow and minor children of a householder who had died without claiming the exemption. But such right can be given

only as against creditors, and not as against heirs, for where there are no debts there is no exemption. Helm v. Helm, 30 Gratt. 404.

SEC. 6. An act of the general assembly, entitled "an act to exempt the homesteads of families from forced sales," passed April 29, 1867, and an act entitled "an act to stay the collection of debts for a limited period," passed March 2, 1866, and the acts amendatory thereof, are hereby abrogated.

SEC. 7. The provisions of this article shall be construed liberally, to the end that all the intents thereof may be fully and perfectly carried out.

Church Property.

SEC. 8. The rights of ecclesiastical bodies in and to church property conveyed to them by regular deeds of conveyance shall not be affected by the late civil war, nor by any antecedent or subsequent event, nor by any act of the legislature purporting to govern the same, but all such property shall pass to and be held by the parties set forth in the original deeds of conveyance, or the legal assignees of such original parties holding through or by conveyance, and any act or acts of the legislature in opposition thereto shall be null and void.

Heirship of Property.

SEC. 9. The children of parents, one or both of whom were slaves at and during the period of cohabitation, and who were recognized by the father as his children, and whose mother was recognized by such father as his wife, and was cohabited with as such, shall be as capable of inheriting any estate whereof such father may have died seized or possessed as though they had been born in lawful wedlock.

ARTICLE XII.

FUTURE CHANGES IN THE CONSTITUTION.

SEC. 1. Any amendment or amendments to the constitution may be proposed in the Senate and House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the general assembly to be chosen at the next general election of senators and members of the House of Delegates, and shall be published for three months previous to the time of making such choice. And if in the general assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people in such manner and at such times as the general assembly shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the general assembly voting thereon, such amendment or amendments shall become part of the constitution.

No previous constitution contained any provision for amendments; but the Constitution of 1864, notwithstanding it contained

no such provision, was amended by the legislature under authority conferred by popular vote, and the test oath and disfranchisement clauses stricken out. Acts Extra Session, June, 1865, p. 3, and Acts 1865–66 pp. 197 and 226.

Six acts proposing amendments to the Constitution have been passed, each, as the Constitution requires, by two successive legislatures, and all the amendments so proposed have been adopted by the people. The only amendment proposed by any legislature, and not agreed to by its successor, was the amendment proposed by the legislature of 1893–94 (Acts, page 975) to authorize the General Assembly to impose upon every male inhabitant of the State between the ages of sixteen and sixty years the duty to work on the public roads for not more than two days in each year. The amendments adopted are as follows: (1) The usury clause in Article X. was struck out by amendment adopted at the May election, 1872. Acts 1870–71, page 397 (March 31, 1871), Acts 1871–72, page 22 and pages 212–214. (2) Sections 1, 2 and 3 of Article VII in relation to the organization of counties were amended November, 1874, and section 4 was stricken out. Acts 1872–73, pages 274–277 (March 31, 1873), Acts 1874, pages 95–98 and 208–212 and 225–226. (3) Section 1, Article III., relating to the elective franchise and qualifications for officers, was amended in November, 1876, so as to require the payment of a capitation tax as a prerequisite of the right to vote; and the right of persons qualified to vote under said section, which, prior to the amendment, had extended to all questions submitted to the people at any election, was restricted to elections for members of the General Assembly and other officers elected by the people. The fourth section of the same article, in regard to registration of voters, was stricken out. Acts 1874–75, pages 200–202 (March 30, 1875), Acts 1875–76, page 82. (4) Sections 2, 3, 4, 5, 6 and 8 of Article V. were amended, and sections 23 and 24 of the same Article added in November, 1876. Acts 1874–75, pages 399–403 (March 30, 1875), Acts 1875–76, page 82. By the amendment to sections 2, 3, 4, 5, 6, and 8 the numbers of the House and Senate were changed; persons holding salaried offices under the State government were disqualified to be members of the legislature, and the

sessions of the legislature were made biennial. The two additional sections, 23 and 24, authorized the legislature to provide for the government of cities and towns, and to remove disabilities incurred under the duelling clause. According to the construction put upon the amendment by the legislature, the first biennial session was that of 1879–80. Acts 1877–78, pages 206–207. (5) The requirement that the capitation tax be paid as a prerequisite of the right to vote was abolished November, 1882. Acts 1879–80, page 296, and Acts of 1881–82, pages 79–80, and pages 213–215. (6) The tenth clause of the Bill of Rights was amended November, 1894, so as to authorize the legislature to provide for the trial of misdemeanors without jury. Acts of 1891–92, page 497 (February 19, 1892), Acts of 1893–94, pages 240 and 248.

SEC. 2. At the general election to be held in the year 1888, and in each twentieth year thereafter, and also at such time as the general assembly may by law provide, the question "Shall there be a convention to revise the constitution and amend the same?" shall be decided by the electors qualified to vote for members of the general assembly; and in case a majority of the electors so qualified voting at such election shall decide in favor of a convention for such purpose, the general assembly, at its next session, shall provide by law for the election of delegates to such convention: provided, that no amendment or revision shall be made which shall deny or in any way impair the right of suffrage or any civil or political right as conferred by this constitution, except for causes which apply to all persons and classes without distinction.

At the election, held under this section in 1888, on the question of calling a convention to revise or amend the Constitution, 3,695 votes were cast for a convention, and 62,625 against it. The question was submitted by the legislature in 1897, and again in 1900. In 1897 the vote was 38,326 for a convention to 83,453 against it; but in 1900, though no change had occurred in the meantime to produce a different result, except a change in the attitude of the Democratic organization, whereby the question was made a party issue, a convention was called by a vote of 77,362 to 60,375, the affirmative vote being less than a majority of the full Democratic vote. The vote at the several elections is given in detail in the Appendix.

SCHEDULE.

That no inconvenience may arise from the changes in the constitution of this state, and in order to carry the same into complete operation, it is hereby declared that—

SEC. 1. The common law and the statute laws now in force not repugnant to this constitution shall remain in force until they expire by their own limitation or are altered or repealed by the legislature.

SEC. 2. All writs, actions, causes of action, prosecutions, and rights of individuals and of bodies corporate and of the state, and all charters of incorporation, shall continue; and all indictments which shall have been found, or which may hereafter be found, for any crime or offence committed before the adoption of this constitution, may be proceeded upon as if no change had taken place. The several courts, except as herein otherwise provided, shall continue, with the like powers and jurisdiction, both in law and in equity, as if this constitution had not been adopted, and until the organization of the judicial department of this constitution.

SEC. 3. That all fines, penalties, forfeitures, and escheats accruing to the state of Virginia under the present constitution and laws shall accrue to the use of the state under this constitution.

SEC. 4. That all recognizances, bonds, obligations, and all other instruments entered into or executed before the adoption of this constitution, to the people of the state of Virginia, to any state, county, or township, or any public officer or public body, or which may be entered into or executed under existing laws, "to the people of the state of Virginia," to any such officer or public body, before the complete organization of the department of government under this constitution, shall remain binding and valid; and rights and liabilities upon the same shall continue, and may be prosecuted as provided by law. All crimes and misdemeanors and penal actions shall be tried, punished and prosecuted as though no change had taken place, until otherwise provided by law.

The office of a schedule is to provide for the transition from the old to the new government, and to obviate inconveniences which would otherwise arise from such transition. In making the schedule the convention acts, in general, as an ordinary legislature, and unless the contrary intention plainly appears the provisions of the schedule are temporary and subject to future legislation. The provisions of the schedule of the present Constitution, as appears from the introductory clause and the provisions themselves, are of this character.

At every organic change of government, when one government succeeds to another, the incumbents in office hold over by sufferance only, upon the principle of public necessity and convenience, unless the new constitution makes provision for their continuance in office. Richmond Mayoralty Case, 19 Gratt. 673; Griffin v. Cunningham, 20 Gratt. 31. Such provision was made by the Constitutions of 1830, 1851 and 1864. The Constitution of 1830, Article VII., after making special provision in regard to

the governor and privy councillors, provided that "all other persons in office when this constituion shall be adopted, except as is herein otherwise expressly directed, shall continue in office until successors shall be appointed, or the laws shall otherwise provide"; by the Constitution of 1851, Schedule, sections 13, 14 and 15, special provisions were made for the continuance in office of certain officers, and all other persons in office were continued in office "until their successors are qualified"; and by the Constitution of 1864, Schedule, section 4, incumbents were continued in office "until their present terms expire." The Schedule of the present Constitution contains no such provision, unless it be the provision in regard to courts in the second section, the meaning of which is left an open question by the Court of Appeals; and, in consequence of this omission, all officers holding over when the Constitution went into operation, except possibly the judges of the courts, by which is meant courts of record, held only sufferance, and were subject to the control of the legislature. Richmond Mayoralty Case, *supra*. But the judges, whether continued in office by the Schedule or not, and all other officers holding over were officers *de facto*, and their official acts were valid and binding. Griffin v. Cunningham, *supra*. Owing, however, to the absence of a constitutional provision authorizing these officers to hold over, a question arose as to the validity of their acts, and this question, about which there was much discussion and difference of opinion, and which was the subject of excited and embittered litigation, led to the adoption by the legislature of the Enabling Act of March 5, 1870, by which the acts in question were ratified and confirmed.

The provisions of the second and fourth sections of the Schedule, that indictments for any crime or offence committed before the adoption of the Constitution might be proceeded with, and that all crimes, misdemeanors and penal actions should be tried, punished and prosecuted as though no change had taken place, until otherwise provided by law, had the effect of continuing the then existing criminal laws, including the laws governing criminal procedure, until they were changed by the legislature. Chahoon's Case, 20 Gratt. 733; Sand's Case, 20 Gratt. 800.

APPENDIX.

CONSTITUTION OF 1776.

BILL OF RIGHTS.

A Declaration of Rights made by the Representatives of the good People of VIRGINIA, *assembled in full and free Convention; which rights do pertain to them, and their Posterity, as the basis and foundation of Government.*

[Unanimously adopted, June 12, 1776.]

1. THAT all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. THAT all power is vested in, and consequently derived from, the people; that Magistrates are their trustees and servants, and at all times amenable to them.

3. THAT government is, or ought to be, instituted for the common benefit, protection and security, of the people, nation, or community: of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

4. THAT no man, or set or men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of Magistrate, Legislator, or Judge, to be hereditary.

5. THAT the Legislative and Executive powers of the State should be separate and distinct from the Judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they

were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. THAT elections of members to serve as representatives of the people, in Assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

7. THAT all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. THAT, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers aud witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land, or the judgment of his peers.

9. THAT excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. THAT general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. THAT, in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. THAT the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

13. THAT a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases, the military should be under strict subordination to, and governed by, the civil power.

14. THAT the people have a right to uniform government; and therefore, that no government separate from, or independent of, the

government of *Virginia*, ought to be erected or established within the limits thereof.

15. THAT no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

16. THAT religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

CONSTITUTION.

The Constitution or Form of Government, agreed to and resolved upon by the Delegates and Representatives of the several Counties and Corporations of Virginia.

[Unanimously adopted, June 29, 1776.]

1. WHEREAS *George* the third, King of *Great Britain* and *Ireland*, and Elector of *Hanover*, heretofore entrusted with the exercise of the kingly office in this government, hath endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good: By denying his Governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and, when so suspended, neglecting to attend to them for many years: By refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the Legislature: By dissolving Legislative Assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people: When dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any Legislative head: By endeavoring to prevent the population of our country, and, for that purpose, obstructing the laws for the naturalization of foreigners: By keeping among us, in time of peace, standing armies and ships of war: By affecting to render the military independent of, and superior to, the civil power: By combining with others to subject us to a foreign jurisdiction; giving his assent to their pretended acts of Legislation: For quartering large bodies of armed troops among us:

For cutting off our trade with all parts of the world: For imposing taxes on us without our consent: For depriving us of the benefits of the trial by jury: For transporting us beyond seas, to be tried for pretended offences: For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever: By plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people: By inciting insurrections of our fellow subjects, with the allurements of forfeiture and confiscation: By prompting our negroes to rise in arms among us, those very negroes, whom, by an inhuman use of his negative, he hath refused us permission to exclude by law: By endeavoring to bring on the inhabitants of our frontiers, the merciless *Indian* savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence: By transporting at this time, a large army of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation: By answering our repeated petitions for redress with a repetition of injuries: And finally, by abandoning the helm of government, and declaring us out of his allegiance and protection. By which several acts of misrule, the government of this country, as formerly exercised under the crown of *Great Britain*, is totally dissolved:

2. WE, therefore, the Delegates and Representatives of the good people of *Virginia*, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country must be reduced, unless some regular adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the General Congress, do ordain and declare the future form of government of *Virginia* to be as followeth:

3. THE Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of the county courts shall be eligible to either House of Assembly.

4. THE Legislative shall be formed of two distinct branches, who, together, shall be a complete Legislature. They shall meet once or oftener, every year, and shall be called the General Assembly of *Virginia*.

5. ONE of these shall be called the House of Delegates, and consist

of two Representatives to be chosen for each county, and for the district of *West Augusta*, annually, of such men as actually reside in and are freeholders of the same, or duly qualified according to law, and also one Delegate or Representative to be chosen annually for the city of *Williamsburg*, and one for the borough of *Norfolk*, and a Representative for each of such other cities and boroughs as may hereafter be allowed particular representation by the Legislature; but when any city or borough shall so decrease as that the number of persons having right of suffrage therein shall have been for the space of seven years successively less than half the number of voters in some one county in *Virginia*, such city or borough thenceforward shall cease to send a Delegate or Representative to the Assembly.

6. THE other shall be called the Senate, and consist of twenty-four members, of whom thirteen shall constitute a House to proceed on business, for whose election the different counties shall be divided into twenty-four districts; and each county of the respective district, at the time of the election of its Delegates, shall vote for one Senator, who is actually a resident and freeholder within the district, or duly qualified according to law, and is upwards of twenty-five years of age; and the sheriffs of each county, within five days at farthest after the last county election in the district, shall meet at some convenient place, and from the poll so taken in their respective counties return as a Senator the man who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes, and numbered by lot. At the end of one year after the general election, the six members elected by the first division shall be displaced, and the vacancies thereby occasioned supplied from such class or division, by new election, in the manner aforesaid. This rotation shall be applied to each division, according to its number, and continued in due order annually.

7. THAT the right of suffrage in the election of members of both Houses shall remain as exercised at present, and each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies.

8. ALL laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates, except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.

9. A GOVERNOR, or Chief Magistrate, shall be chosen annually, by joint ballot of both Houses, to be taken in each House respectively, deposited in the conference room, the boxes examined jointly by a Committee of each House, and the numbers severally reported to them, that the appointments may be entered; (which shall be the mode of taking the joint ballot of both Houses in all cases;) who shall not continue in that office longer than three years successively, nor be eligible until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary, shall be settled on him during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government according to the laws of this commonwealth; and shall not, under any pretence, exercise any power or prerogative by virtue of any law, statute, or custom, of *England:* But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

10. EITHER House of the General Assembly may adjourn themselves respectively. The Governor shall not prorogue or adjourn the Assembly during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time to which they shall stand prorogued or adjourned.

11. A PRIVY Council or Council of State, consisting of eight members, shall be chosen by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose out of their own members a President, who, in case of the death, inability, or necessary absence of the Governor from the government, shall act as Lieutenant Governor. Four members shall be sufficient to act, and their advice and proceedings shall be entered of record, and signed by the members present (to any part whereof any member may enter his dissent) to be laid before the General Assembly, when called for by them. This Council may appoint their own clerk, who shall have a salary settled by law, and take an oath of secrecy in such matters as he shall be directed by the Board to conceal. A sum of money appropriated to that purpose shall be divided annually among the mem-

bers, in proportion to their attendance; and they shall be incapable during their continuance in office, of sitting in either House of Assembly. Two members shall be removed by joint ballot of both Houses of Assembly at the end of every three years, and be ineligible for the three next years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

12. THE Delegates for *Virginia* to the Continental Congress shall be chosen annually, or superseded in the mean time by joint ballot of both Houses of Assembly.

13. THE present militia officers shall be continued, and vacancies supplied by appointment of the Governor, with the advice of the Privy Council, or recommendations from the respective County Courts; but the Governor and Council shall have a power of suspending any officer, and ordering a court-martial on complaint of misbehavior or inability, or to supply vacancies of officers happening when in actual service. The Governor may embody the militia, with the advice of the Privy Council, and when embodied, shall alone have the direction of the militia under the laws of the country.

14. THE two Houses of Assembly shall, by joint ballot, appoint judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney General, to be commissioned by the Governor, and continue in office during good behavior. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others holding lucrative offices, and all Ministers of the Gospel of every denomination, be incapable of being elected members of either House of Assembly, or the Privy Council.

15. THE Governor, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties; and in case of vacancies, or a necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective County Courts. The present acting Secretary in *Virginia*, and clerks of all the County Courts, shall continue in office. In case of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed as before directed, and the clerks by the respective courts. The present and future clerks shall hold their offices during good behavior, to be

judged of and determined in the General Court. The Sheriffs and Coroners shall be nominated by the respective courts, approved by the Governor, with the advice of the Privy Council, and commissioned by the Governor. The Justices shall appoint constables, and all fees of the aforesaid officers be regulated by law.

16. THE Governor, when he is out of office, and others offending against the State, either by mal-administration, corruption, or other means by which the safety of the State may be endangered, shall be impeachable by the House of Delegates. Such impeachment to be prosecuted by the Attorney General, or such other person or persons as the House may appoint, in the General Court, according to the laws of the land. If found guilty, he or they shall be either for ever disabled to hold any office under government, or removed from such office *pro tempore*, or subjected to such pains or penalties as the law shall direct.

17. IF all, or any of the Judges of the General Court, shall, on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences before-mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause.

18. COMMISSIONS and grants shall run *In the name of the* COMMONWEALTH *of* VIRGINIA, and bear test by the Governor, with the seal of the Commonwealth annexed. Writs shall run in the same manner, and bear test by the clerks of the several courts. Indictments shall conclude, *Against the peace and dignity of the Commonwealth.*

19. A TREASURER shall be appointed annually, by joint ballot of both Houses.

20. ALL escheats, penalties, and forfeitures, heretofore going to the King, shall go the Commonwealth, save only such as the Legislature may abolish, or otherwise provide for.

21. THE territories contained within the charters erecting the colonies of *Maryland, Pennsylvania, North* and *South Carolina,* are hereby ceded, released, and for ever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction, and government, and all other rights whatsoever which might at any time heretofore have been claimed by *Virginia,* except the free navigation

and use of the rivers *Potowmac* and *Pohomoke*, with the property of the *Virginia* shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. The western and northern extent of *Virginia* shall in all other respects stand as fixed by the charter of King *James* the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of *Great Britain* and *France*, in the year one thousand seven hundred and sixty-three; unless, by act of Legislature, one or more territories shall hereafter be laid off, and governments established westward of the *Allegheny* mountains. And no purchase of lands shall be made of the *Indian* natives, but on behalf of the public, by authority of the General Assembly.

22. In order to introduce this government, the representatives of the people met in Convention shall choose a Governor and Privy Council, also such other officers directed to be chosen by both Houses as may be judged necessary to be immediately appointed. The Senate to be first chosen by the people, to continue until the last day of *March* next, and the other officers until the end of the succeeding session of Assembly. In case of vacancies, the Speaker of either House shall issue writs for new elections.

CONSTITUTION OF 1830.

This constitution was framed by a convention which assembled at Richmond October 5, 1829, and adjourned January 14, 1830. It was submitted to the people for ratification.

BILL OF RIGHTS.

(Readopted without change. See original prefixed to Constitution of 1776).

CONSTITUTION.

WHEREAS the delegates and representatives of the good people of *Virginia*, in convention assembled, on the twenty-ninth day of June, in the year of our Lord one thousand, seven hundred and seventy-six: reciting and declaring, that whereas, *George* the Third, king of *Great Britain* and *Ireland*, and elector of *Hanover*, before that time entrusted with the exercise of the kingly office in the government of *Virginia*, had endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good; by denying his governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and when so suspended neglecting to attend to them for many years; by refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature; by dissolving legislative assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people; when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head; by endeavoring to prevent the population of our country, and for that purpose obstructing the laws for the naturalization of foreigners; by keeping among us, in time of peace, standing armies and ships of war; by affecting to render the military independent of and superior to the civil power; by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation, for quartering large bodies of armed troops among us, for cutting off our trade with all parts of the world, for imposing taxes on us without our consent, for depriving us of the benefits of the trial by jury, for trans-

porting us beyond seas to be tried for pretended offences, for suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever; by plundering our seas, ravaging our coasts, burning our towns and destroying the lives of our people; by inciting insurrections of our fellow-subjects with the allurements of forfeiture and confiscation; by prompting our negroes to rise in arms among us, those very negroes, whom by an inhuman use of his negative he had refused us permission to exclude by law; by endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions of existence; by transporting hither a large army of foreign mercenaries, to complete the work of death, desolation and tyranny, then already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation; by answering our repeated petitions for redress with a repetition of injuries; and finally, by abandoning the helm of government, and declaring us out of his allegiance and protection; by which several acts of misrule, the government of this country, as before exercised under the crown of *Great Britain*, was totally dissolved: did, therefore, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country would be reduced, unless some regular adequate mode of civil polity should be speedily adopted, and in compliance with the recommendation of the general congress, ordain and declare a form of government of *Virginia:*

And whereas the general assembly of *Virginia*, by an act passed on the tenth day of February, in the year of our Lord one thousand eight hundred and twenty-nine, entitled an act to organize a convention, did authorize and provide for the election, by the people, of delegates and representatives, to meet and assemble, in general convention, at the capitol, in the city of *Richmond*, on the first Monday in October, in the year last aforesaid, to consider, discuss and propose, a new constitution, or alterations and amendments of the existing constitution of this commonwealth, to be submitted to the people and to be by them ratified or rejected:

We, therefore, the delegates and representatives of the good people of *Virginia*, elected and in convention assembled, in pursuance of the said act of assembly, do submit and propose to the people, the following Amended Constitution and Form of Government for this Commonwealth, that is to say:

ARTICLE I.

The declaration of rights made on the 12th June, 1776, by the representatives of the good people of *Virginia* assembled in full and free convention, which pertained to them and their posterity, as the basis and foundation of government, requiring, in the opinion of this convention, no amendment, shall be prefixed to this constitution, and have the same relation thereto as it had to the former constitution of this commonwealth.

ARTICLE II.

The legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of the county courts shall be eligible to either house of assembly.

ARTICLE III.

1. The legislature shall be formed of two distinct branches, which together shall be a complete legislature, and shall be called the General Assembly of Virginia.

2. One of these shall be called the House of Delegates, and shall consist of one hundred and thirty-four members, to be chosen annually, for and by the several counties, cities, towns and boroughs of the commonwealth; whereof thirty-one delegates shall be chosen for and by the twenty-six counties lying west of the Alleghany mountains; twenty-five for and by the fourteen counties lying between the Alleghany and Blue Ridge of mountains; forty-two for and by the twenty-nine counties lying east of the Blue Ridge of mountains and above tide-water; and thirty-six for and by the counties, cities, towns and boroughs lying upon tide-water, that is to say: Of the twenty-six counties lying west of the Alleghany, the counties of Harrison, Montgomery, Monongalia, Ohio and Washington, shall each elect two delegates; and the counties of Brooke, Cabell, Grayson, Greenbrier, Giles, Kanawha, Lee, Lewis, Logan, Mason, Monroe, Nicholas, Pocahontas, Preston, Randolph, Russell, Scott, Tazewell, Tyler, Wood and Wythe, shall each elect one delegate. Of the fourteen counties lying between the Alleghany and Blue Ridge, the counties of Frederick and Shenandoah, shall each elect three delegates; the counties of Augusta, Berkeley, Botetourt, Hampshire, Jefferson, Rockingham and Rockbridge shall each elect two delegates; and the counties of Alleghany, Bath, Hardy, Morgan and Pendleton, shall each elect

one delegate. Of the twenty-nine counties lying east of the Blue Ridge and above tide-water, the county of Loudoun shall elect three delegates; the counties of Albemarle, Bedford, Brunswick, Buckingham, Campbell, Culpeper, Fauquier, Franklin, Halifax, Mecklenburg and Pittsylvania, shall each elect two delegates; and the counties of Amelia, Amherst, Charlotte, Cumberland, Dinwiddie, Fluvanna, Goochland, Henry, Louisa, Lunenburg, Madison, Nelson, Nottoway, Orange, Patrick, Powhatan and Prince Edward, shall each elect one delegate. And of the counties, cities towns and boroughs lying on tide-water, the counties of Accomack and Norfolk shall each elect two delegates; the counties of Caroline, Chesterfield, Essex, Fairfax, Greenesville, Gloucester, Hanover, Henrico, Isle of Wight, King & Queen, King William, King George, Nansemond, Northumberland, Northampton, Princess Anne, Prince George, Prince William, Southampton, Spottsylvania, Stafford, Sussex, Surry and Westmoreland, and the city of Richmond, the borough of Norfolk, and the town of Petersburg, shall each elect one delegate; the counties of Lancaster and Richmond shall together elect one delegate; the counties of Matthews and Middlesex shall together elect one delegate; the counties of Elizabeth City and Warwick shall together elect one delegate; the counties of James City and York, and the city of Williamsburg, shall together elect one delegate; and the counties of New Kent and Charles City shall together elect one delegate.

3. The other house of the general assembly shall be called the Senate, and shall consist of thirty-two members, of whom thirteen shall be chosen for and by the counties lying west of the Blue Ridge of mountains, and nineteen for and by the counties, cities, towns and boroughs lying east thereof; and for the election of whom the counties, cities, towns and boroughs shall be divided into thirty-two districts, as hereinafter provided. Each county of the respective districts, at the time of the first election of its delegate or delegates under this constitution, shall vote for one senator; and the sheriffs or other officers holding the election for each county, city, town or borough, within five days at farthest after the last county, city, town or borough election in the district, shall meet at some convenient place, and from the polls so taken in their respective counties, cities towns or boroughs, return as a senator the person who shall have the greatest number of votes in the whole district. To keep up this assembly by rotation, the districts shall be equally divided into four classes, and numbered by lot. At the end of one year after the first general election, the eight members

elected by the first division shall be displaced, and the vacancies thereby occasioned supplied from such class or division by new election in the manner aforesaid. This rotation shall be applied to each division according to its number, and continued in due order annually. And for the election of senators, the counties of Brooke, Ohio and Tyler shall form one district; the counties of Monongalia, Preston and Randolph shall form another district; the counties of Harrison, Lewis and Wood shall form another district; the counties of Kanawha, Mason, Cabell, Logan and Nicholas shall form another district; the counties of Greenbrier, Monroe, Giles and Montgomery shall form another district; the counties of Tazewell, Wythe and Grayson shall form another district; the counties of Washington, Russell, Scott and Lee shall form another district; the counties of Berkeley, Morgan and Hampshire shall form another district; the counties of Frederick and Jefferson shall form another district; the counties of Shenandoah and Hardy shall form another district; the counties of Rockingham and Pendleton shall form another district; the counties of Augusta and Rockbridge shall form another district; the counties of Alleghany, Bath, Pocahontas and Botetourt shall form another district; the counties of Loudoun and Fairfax shall form another district; the counties of Fauquier and Prince William shall form another district; the counties of Stafford, King George, Westmoreland, Richmond, Lancaster and Northumberland shall form another district; the counties of Culpeper, Madison and Orange shall form another district; the counties of Albemarle, Nelson and Amherst shall form another district; the counties of Fluvanna, Goochland, Louisa and Hanover shall form another district; the counties of Spottsylvania, Caroline and Essex shall form another district; the counties of King and Queen, King William, Gloucester, Matthews and Middlesex, shall form another district; the counties of Accomack, Northampton, Elizabeth City, York and Warwick, and the City of Williamsburg, shall form another district; the counties of Charles City, James City, New Kent and Henrico, and the City of Richmond, shall form another district; the counties of Bedford and Franklin shall form another district; the counties of Buckingham, Campbell and Cumberland shall form another district; the counties of Patrick, Henry and Pittsylvania shall form another district; the counties of Halifax and Mecklenburg shall form another district; the counties of Charlotte, Lunenburg, Nottoway and Prince Edward shall form another district; the counties of Amelia, Powhatan and Chesterfield, and the town of Petersburg, shall form

another district; the counties of Brunswick, Dinwiddie and Greenesville shall form another district; the counties of Isle of Wight, Prince George, Southampton, Surry and Sussex, shall form another district; and the counties of Norfolk, Nansemond and Princess Anne, and the borough of Norfolk, shall form another district.

4. It shall be the duty of the legislature to re-apportion, once in ten years, to-wit: in the year 1841, and every ten years thereafter, the representation of the counties, cities, towns and boroughs of this commonwealth, in both of the legislative bodies: *Provided, however*, That the number of delegates from the aforesaid great districts, and the number of senators from the aforesaid two great divisions respectively, shall neither be increased nor diminished by such re-apportionment. And when a new county shall hereafter be created, or any city, town or borough, not now entitled to separate representation in the house of delegates, shall have so increased in population as to be entitled, in the opinion of the general assembly, to such representation, it shall be the duty of the general assembly to make provision by law for securing to the people of such new county, or such city, town or borough, an adequate representation. And if the object cannot otherwise be effected, it shall be competent to the general assembly to re-apportion the whole representation of the great district containing such new county, or such city, town or borough, within its limits; which re-apportionment shall continue in force till the next regular decennial re-apportionment.

5. The general assembly, after the year 1841, and at intervals thereafter of not less than ten years, shall have authority, two-thirds of each house concurring, to make re-apportionments of delegates and senators throughout the commonwealth, so that the number of delegates shall not at any time exceed 150, nor of senators 36.

6. The whole number of members to which the state may at any time be entitled in the house of representatives of the United States, shall be apportioned as nearly as may be amongst the several counties, cities, boroughs and towns of the state, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.

7. Any person may be elected a senator who shall have attained to the age of thirty years, and shall be actually a resident and freeholder

within the district, qualified by virtue of his freehold to vote for members of the general assembly according to this constitution. And any person may be elected a member of the house of delegates who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the county, city, town, borough or election district, qualified by virtue of his freehold to vote for members of the general assembly according to this constitution : *Provided*, That all persons holding lucrative offices, and ministers of the gospel and priests of every denomination, shall be incapable of being elected members of either house of assembly.

8. The members of the assembly shall receive for their services a compensation to be ascertained by law and paid out of the public treasury; but no law increasing the compensation of the members shall take effect until the end of the next annual session after such law shall have been enacted. And no senator or delegate shall, during the term for which he shall have been elected, be appointed to any civil office of profit under the commonwealth, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

9. The general assembly shall meet once or oftener every year. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide. And each house shall choose its own speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies. But if vacancies shall occur, by death or resignation, during the recess of the general assembly, such writs may be issued by the governor, under such regulations as may be prescribed by law. Each house shall judge of the election, qualification and returns of its members ; may punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offence.

10. All laws shall originate in the house of delegates, to be approved or rejected by the senate, or to be amended with the consent of the house of delegates.

11. The privilege of the writ of *habeas corpus* shall not in any case be suspended. The legislature shall not pass any bill of attainder; or any *ex post facto* law; or any law impairing the obligation of contracts; or any law whereby private property shall be taken for public uses, without just compensation; or any law abridging the freedom of speech or of the press. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the legislature shall not prescribe any religious test whatever; nor confer any peculiar privileges or advantages on any one sect or denomination; nor pass any law requiring or authorizing any religious society, or the people of any district within this commonwealth, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

12. The legislature may provide by law that no person shall be capable of holding or being elected to any post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of this commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such a duel, or sent or accepted such challenge, or been second in such duel, or bearer of such challenge or acceptance.

13. The governor, the judges of the court of appeals and superior courts, and all others offending against the state, either by mal-administration, corruption, neglect of duty, or any other high crime or misdemeanor, shall be impeachable by the house of delegates; such impeachment to be prosecuted before the senate, which shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit, under the commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

14. Every white male citizen of the commonwealth, resident therein, aged twenty-one years and upwards, being qualified to exercise the right of suffrage according to the former constitution and laws; and every such citizen, being possessed, or whose tenant for years, at will or at sufferance, is possessed, of an estate of freehold in land of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being possessed, as tenant in common, joint tenant or parcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being entitled to a reversion or vested remainder in fee, expectant on an estate for life or lives, in land of the value of fifty dollars, and so assessed to be if any assessment thereof be required by law; (each and every such citizen, unless his title shall have come to him by descent, devise, marriage or marriage-settlement, having been so possessed or entitled for six months;) and every such citizen, who shall own and be himself in actual occupation of a leasehold estate, with the evidence of title recorded two months before he shall offer to vote, of a term originally not less than five years, of the annual value or rent of twenty dollars; and every such citizen, who for twelve months next preceding has been a housekeeper and head of a family within the county, city, town, borough or election district where he may offer to vote, and shall have been assessed with a part of the revenue of the commonwealth within the preceding year, and actually paid the same—and no other persons—shall be qualified to vote for members of the general assembly, in the county, city, town or borough, respectively, wherein such land shall lie, or such housekeeper and head of a family shall live. And in case of two or more tenants in common, joint tenants or parceners, in possession, reversion or remainder, having interest in land, the value whereof shall be insufficient to entitle them all to vote, they shall together have as many votes as the value of the land shall entitle them to; and the legislature shall by law provide the mode in which their vote or votes shall in such case be given: *Provided nevertheless,*

That the right of suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, seaman or marine, in the service of the United States, or by any person convicted of any infamous offence.

15. In all elections in this commonwealth, to any office or place of trust, honor or profit, the votes shall be given openly, or *viva voce*, and not by ballot.

ARTICLE IV.

1. The chief executive power of this commonwealth shall be vested in a governor, to be elected by the joint vote of the two houses of the general assembly. He shall hold his office during the term of three years, to commence on the first day of January next succeeding his election, or on such other day as may, from time to time, be prescribed by law; and he shall be ineligible to that office for three years next after his term of service shall have expired.

2. No person shall be eligible to the office of governor unless he shall have attained the age of thirty years, shall be a native citizen of the United States, or shall have been a citizen thereof at the adoption of the federal constitution, and shall have been a citizen of this commonwealth for the five years next preceding his election.

3. The governor shall receive for his services a compensation to be fixed by law, which shall be neither increased nor diminished during his continuance in office.

4. He shall take care that the laws be faithfully executed; shall communicate to the legislature, at every session, the condition of the commonwealth, and recommend to their consideration such measures as he may deem expedient. He shall be commander-in-chief of the land and naval forces of the state. He shall have power to embody the militia, when, in his opinion, the public safety shall require it; to convene the legislature, on application of a majority of the members of the house of delegates, or when, in his opinion, the interest of the commonwealth may require it; to grant reprieves and pardons, except where the prosecution shall have been carried on by the house of delegates, or the law shall otherwise particularly direct; to conduct, either in person, or in such manner as shall be prescribed by law, all intercourse with other and foreign states; and during the recess of the legislature, to fill, *pro tempore*, all vacancies in those offices, which it may be the duty of the legislature to fill permanently: *Provided*,

that his appointments to such vacancies shall be by commissions to expire at the end of the next succeeding session of the general assembly.

5. There shall be a council of state, to consist of three members, any one or more of whom may act. They shall be elected by joint vote of both houses of the general assembly, and remain in office three years. But of those first elected, one, to be designated by lot, shall remain in office for one year only, and one other to be designated in like manner, shall remain in office for two years only. Vacancies occurring by expiration of the term of service, or otherwise, shall be supplied by elections made in like manner. The governor shall, before he exercises any discretionary power conferred on him by the constitution and laws, require the advice of the council of state, which advice shall be registered in books kept for that purpose, signed by the members present and consenting thereto, and laid before the general assembly when called for by them. The council shall appoint their own clerk, who shall take an oath to keep secret such matters as he shall be ordered by the board to conceal. The senior councillor shall be lieutenant-governor, and in case of the death, resignation, inability or absence of the governor from the seat of government, shall act as governor.

6. The manner of appointing militia officers shall be provided for by law; but no officer below the rank of a brigadier-general, shall be appointed by the general assembly.

7. Commissions and grants shall run in the name of the commonwealth of Virginia, and bear teste by the governor, with the seal of the commonwealth annexed.

ARTICLE V.

1. The judicial power shall be vested in a supreme court of appeals, in such superior courts as the legislature may from time to time ordain and establish, and the judges thereof, in the county courts, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in corporation courts, and in the magistrates who may belong to the corporate body. The jurisdiction of these tribunals and of the judges thereof, shall be regulated by law. The judges of the supreme court of appeals and of the superior courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this constitution; and shall, at the same time, hold no other office, appointment, or public trust; and the acceptance thereof by either of them shall vacate his judicial office.

2. No law abolishing any court shall be construed to deprive a judge thereof of his office, unless two-thirds of the members of each house present concur in the passing thereof; but the legislature may assign other judicial duties to the judges of courts abolished by any law enacted by less than two-thirds of the members of each house present.

3. The present judges of the supreme court of appeals, of the general court, and of the superior courts of chancery, shall remain in office until the termination of the session of the first legislature elected under this constitution, and no longer.

4. The judges of the supreme court of appeals and of the superior courts shall be elected by the joint vote of both houses of the general assembly.

5. The judges of the supreme court of appeals and of the superior courts shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office.

6. Judges may be removed from office by a concurrent vote of both houses of the general assembly; but two-thirds of the members present must concur in such vote, and the cause of removal shall be entered on the journals of each. The judge against whom the legislature may be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

7. On the creation of any new county, justices of the peace shall be appointed, in the first instance, in such manner as may be prescribed by law. When vacancies shall occur in any county, or it shall, for any cause, be deemed necessary to increase the number, appointments shall be made by the governor, on the recommendation of the respective county courts.

8. The attorney-general shall be appointed by joint vote of the two houses of the general assembly, and commissioned by the governor, and shall hold his office during the pleasure of the general assembly. The clerks of the several courts, when vacancies shall occur, shall be appointed by their respective courts, and the tenure of office, as well of those now in office as of those who may be hereafter appointed, shall be prescribed by law. The sheriffs and coroners shall be nominated by the respective county courts, and when approved by the governor, shall be commissioned by him. The justices shall appoint constables. And all fees of the aforesaid officers shall be regulated by law.

9. Writs shall run in the name of the commonwealth of Virginia, and bear teste by the clerks of the several courts. Indictments shall conclude, Against the peace and dignity of the commonwealth.

ARTICLE VI.

A treasurer shall be appointed annually by joint vote of both houses.

ARTICLE VII.

The executive department of the government shall remain as at present organized, and the governor and privy councillors shall continue in office, until a governor elected, under this constitution, shall come into office; and all other persons in office when this constitution shall be adopted, except as is herein otherwise expressly directed, shall continue in office, till successors shall be appointed, or the law shall otherwise provide; and all the courts of justice now existing shall continue with their present jurisdiction, until and except so far as the judicial system may or shall be hereafter otherwise organized by the legislature.

Done in Convention in the city of Richmond, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the independence of the United States of America.

PHILIP P. BARBOUR,
President of the Convention.

D. BRIGGS,
Secretary of the Convention.

RATIFICATION OF THE CONSTITUTION.

On the day that the president of the convention of Virginia signed, and the secretary attested the enrolled amended constitution, to-wit: on the 15th of January, 1830, the convention ordered as follows:

Ordered, That the roll containing the draft of the amended constitution adopted by this convention, and by it submitted to the people of this commonwealth, for their ratification or rejection, be enclosed by the secretary in a case proper for its preservation, and deposited among the archives of the council of state.

Ordered, That the secretary do cause the journal of the proceedings of this convention to be fairly entered in a well bound book, and after the same shall have been signed by the president, and attested by the secretary, that he deposit the same, together with all the orig-

inal documents in the possession of the convention, and connected with its proceedings, among the archives of the council of state; and further, that he cause ten printed copies of the said journal to be well bound, and deposited in the public library.

Ordered, That the president of the convention do certify a true copy of the amended constitution to the general assembly now in session; and that the general assembly be and they are hereby requested to make any additional provisions by law, which may be necessary and proper for submitting the same to the voters thereby qualified to vote for members of the general assembly at the next April elections, and for organizing the government under the amended constitution, in case it shall be approved and ratified by such voters.

CONSTITUTION OF 1851.

This Constitution was framed by a convention which assembled at Richmond October 14, 1850, and adjourned August 1, 1851. The Constitution was submitted to and ratified by the people.

BILL OF RIGHTS.

(Readopted without change, except sections 5, 6, 8 and 11, which are given below as amended. For the other sections see orignal prefixed to Constitution of 1776.)

5. That the legislative, executive and judicial powers should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

8. That, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

11. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury of twelve men is preferable to any other, and ought to be held sacred.

CONSTITUTION.

Whereas the delegates and representatives of the good people of Virginia, in convention assembled, on the twenty-ninth day of June in the year of our Lord one thousand seven hundred and seventy-six—reciting and declaring, that whereas George the Third, king of Great Britain and Ireland and elector of Hanover, before that time entrusted with the exercise of the kingly office in the government of Virginia, had endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good; by denying his governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and when so suspended, neglecting to attend to them for many years; by refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature; by dissolving legislative assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people; when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head; by endeavoring to prevent the population of our country, and for that purpose obstructing the laws for the naturalization of foreigners; by keeping among us, in time of peace, standing armies, and ships of war; by affecting to render the military independent of and superior to the civil power; by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation, for quartering large bodies of armed troops among us, for cutting off our trade with all parts of the world, for imposing taxes on us without our consent, for depriving us of the benefits of the trial by jury, for transporting us beyond seas to be tried for pretended offences, for suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever; by plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people; by inciting insurrections of our fellow subjects with the allurements of forfeiture and confiscation; by prompting our negroes to rise in arms among us—those very negroes, whom, by an inhuman use of his negative, he had refused us permission to exclude by law; by endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions of existence; by transporting hither a large army of foreign mercenaries to complete the work of

death, desolation and tyranny, then already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation; by answering our repeated petitions for redress with a repetition of injuries; and finally, by abandoning the helm of government, and declaring us out of his allegiance and protection; by which several acts of misrule, the government of this country, as before exercised under the crown of Great Britain, was totally dissolved—did, therefore, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country would be reduced, unless some regular, adequate mode of civil policy should be speedily adopted, and in compliance with the recommendation of the general congress, ordain and declare a form of government of Virginia:

And whereas a convention held on the first Monday in October, in the year one thousand eight hundred and twenty-nine, did propose to the people of the commonwealth an amended constitution or form of government, which was ratified by them:

And whereas the general assembly of Virginia, by an act passed on the fourth of March, in the year one thousand eight hundred and fifty, did provide for the election, by the people, of delegates to meet in general convention, to consider, discuss and propose a new constitution, or alterations and amendments to the existing constitution of this commonwealth; and by an act passed on the thirteenth of March, in the year one thousand eight hundred and fifty-one, did further provide for submitting the same to the people for ratification or rejection:

We, therefore, the delegates of the good people of Virginia, elected and in convention assembled, in pursuance of said acts, do propose to the people the following constitution and form of government for this commonwealth:

ARTICLE. I.

BILL OF RIGHTS.

The declaration of rights, as amended and prefixed to this constitution, shall have the same relation thereto as it had to the former constitution.

ARTICLE II.

DIVISON OF POWERS.

The legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to either house of assembly.

ARTICLE III.

QUALIFICATION OF VOTERS.

1. Every white male citizen of the commonwealth, of the age of twenty-one years, who has been a resident of the State for two years, and of the county, city or town where he offers to vote for twelve months next preceding an election—and no other person—shall be qualified to vote for members of the general assembly and all officers elective by the people: but no person in the military, naval or marine service of the United States shall be deemed a resident of this State, by reason of being stationed therein. And no person shall have the right to vote, who is of unsound mind, or a pauper, or a non-commissioned officer, soldier, seaman or marine in the service of the United States, or who has been convicted of bribery in an election, or of any infamous offence.

2. The general assembly, at its first session after the adoption of this constitution, and afterwards as occasion may require, shall cause every city or town, the white population of which exceeds five thousand, to be laid off into convenient wards, and a separate place of voting to be established in each; and thereafter no inhabitant of such city or town shall be allowed to vote except in the ward in which he resides.

3. No voter, during the time for holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger; to work upon the public roads, or to attend any court as suitor, juror, or witness; and no voter shall be subject to arrest under any civil process during his attendance at elections, or in going to and returning from them.

4. In all elections votes shall be given openly, or viva voce, and not by ballot; but dumb persons entitled to suffrage may vote by ballot.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

1. The legislature shall be formed of two distinct branches, which together shall be a complete legislature, and shall be called the General Assembly of Virginia.

House of Delegates.

2. One of these shall be called the House of Delegates, and shall consist of one hundred and fifty-two members, to be chosen biennially for and by the several counties, cities and towns of the commonwealth, and distributed and apportioned as follows:

The counties of Augusta and Rockingham and the city of Richmond shall each elect three delegates; the counties of Albemarle, Bedford, Berkeley, Campbell, Fauquier, Franklin, Frederick, Halifax, Hampshire, Harrison, Jefferson, Kanawha, Loudoun, Marion, Monongalia, Monroe, Norfolk, Pittsylvania, Preston, Rockbridge, Shenandoah and Washington shall each elect two delegates; the counties of Botetourt and Craig shall together elect two delegates.

The counties of Accomack, Alexandria, Amherst, Appomattox, Barbour, Brunswick, Buckingham, Cabell, Caroline, Carroll, Charlotte, Chesterfield, Clarke, Culpeper, Dinwiddie, Fairfax, Floyd, Fluvanna, Giles, Gloucester, Goochland, Grayson, Greenbrier, Hanover, Hardy, Henrico, Henry, Highland, Isle of Wight, Jackson, King William, Lee, Lewis, Louisa, Lunenburg, Madison, Marshall, Mason, Mercer, Mecklenburg, Montgomery, Morgan, Nansemond, Nelson, Northampton, Page, Patrick, Pendleton, Pocahontas, Princess Anne, Prince Edward, Prince William, Pulaski, Putnam, Randolph, Rappahannock, Roanoke, Scott, Smyth, Southampton, Spotsylvania, Taylor, Upshur, Warren, Wayne, Wetzel, Wood and Wythe, and the cities of Norfolk and Petersburg, shall each elect one delegate.

The counties of Lee and Scott, in addition to the delegate to be elected by each, shall together elect one delegate.

The following counties and cities shall compose election districts: Alleghany and Bath; Amelia and Nottoway; Boone, Wyoming and Logan; Braxton and Nicholas; Charles City, James City and New Kent; Cumberland and Powhatan; Doddridge and Tyler; Elizabeth City, Warwick, York, and the city of Williamsburg; Essex and King & Queen; Fayette and Raleigh; Gilmer and Wirt; Green and Orange; Greenesville and Sussex; King George and Stafford; Lancaster and Northumberland; Matthews and Middlesex; Pleasants and Ritchie; Prince George and Surry; and Richmond and Westmoreland—each of which districts shall elect one delegate.

At the first general election, under this constitution, the county of Ohio shall elect three delegates, and the counties of Brooke and Hancock shall together elect one delegate; at the second general election, the county of Ohio shall elect two delegates, and the counties of Brooke and Hancock shall each elect one delegate; and so on, alternately, at succeeding general elections.

At the first general election, the county of Russell shall elect two delegates, and the county of Tazewell shall elect one delegate; at the

second general election, the county of Tazewell shall elect two delegates, and the county of Russell shall elect one delegate; and so on, alternately, at succeeding general elections.

The general assembly shall have power, upon application of a majority of the voters of the county of Campbell, to provide, that instead of the two delegates to be elected by said county, the town of Lynchburg shall elect one delegate, and the residue of the county of Campbell shall elect one delegate.

Senate.

3. The other house of the general assembly shall be called the Senate, and shall consist of fifty members, to be elected for the term of four years; for the election of whom, the counties, cities and towns shall be divided into fifty districts. Each county, city and town of the respective districts, at the time of the first election of its delegate or delegates under this constitution, shall vote for one senator; and the sheriffs or other officers holding the election for each county, city and town, within five days at farthest after the last election in the district, shall meet at the court-house of the county or city first named in the district, and from the polls so taken in their respective counties, cities and towns, return as senator the person who has received the greatest number of votes in the whole district. Upon the assembling of the senators so elected, they shall be divided in two equal classes, to be numbered by lot. The term of service of the senators of the first class shall expire with that of the delegates first elected under this constitution, and of the senators of the second class at the expiration of two years thereafter; and this alternation shall be continued, so that one-half of the senators may be chosen every second year.

4. For the election of senators—

I. The counties of Accomack and Northampton shall form one district:

II. The city of Norfolk shall be another district:

III. The counties of Norfolk and Princess Anne shall form another district:

IV. The counties of Isle of Wight, Nansemond and Surry shall form another district:

V. The counties of Sussex, Southampton and Greenesville shall form another district:

VI. The city of Petersburg and the county of Prince George shall form another district:

VII. The counties of Dinwiddie, Amelia and Brunswick shall form another district:

VIII. The counties of Powhatan, Cumberland and Chesterfield shall form another district:

IX. The counties of Lunenburg, Nottoway and Prince Edward shall form another district:

X. The counties of Mecklenburg and Charlotte shall form another district:

XI. The county of Pittsylvania shall be another district:

XII. The county of Halifax shall be another district:

XIII. The counties of Henry, Patrick and Franklin shall form another district:

XIV. The county of Bedford shall be another district:

XV. The counties of Campbell and Appomattox shall form another district:

XVI. The city of Williamsburg and the counties of James City, Charles City, New Kent, York, Elizabeth City and Warwick shall form another district:

XVII. The counties of Henrico and Hanover shall form another district:

XVIII. The city of Richmond shall be another district:

XIX. The counties of Gloucester, Matthews and Middlesex shall form another district:

XX. The counties of Richmond, Lancaster, Northumberland and Westmoreland shall form another district:

XXI. The counties of King and Queen, King William and Essex shall form another district:

XXII. The counties of Caroline and Spotsylvania shall form another district:

XXIII. The counties of Stafford, King George and Prince William shall form another district:

XXIV. The counties of Fairfax and Alexandria shall form another district:

XXV. The county of Loudoun shall be another district:

XXVI. The counties of Fauquier and Rappahannock shall form another district:

XXVII. The counties of Madison, Culpeper, Orange and Greene shall form another district:

XXVIII. The county of Albemarle shall be another district:

XXIX. The counties of Louisa, Goochland and Fluvanna shall form another district:

XXX. The counties of Nelson, Amherst and Buckingham shall form another district:

XXXI. The counties of Jefferson and Berkeley shall form another district:

XXXII. The counties of Hampshire, Hardy and Morgan shall form another district:

XXXIII. The counties of Frederick, Clarke and Warren shall form another district:

XXXIV. The counties of Shenandoah and Page shall form another district:

XXXV. The counties of Rockingham and Pendleton shall form another district:

XXXVI. The county of Augusta shall be another district:

XXXVII. The counties of Bath, Highland and Rockbridge shall form another district:

XXXVIII. The counties of Botetourt, Alleghany, Roanoke and Craig shall form another district:

XXXIX. The counties of Carroll, Floyd, Grayson, Montgomery and Pulaski shall form another district:

XL. The counties of Mercer, Monroe, Giles and Tazewell shall form another district:

XLI. The counties of Smyth, Wythe and Washington shall form another district:

XLII. The counties of Scott, Lee and Russell shall form another district:

XLIII. The counties of Boone, Logan, Kanawha, Putnam and Wyoming shall form another district:

XLIV. The counties of Nicholas, Fayette, Pocahontas, Raleigh, Braxton and Greenbrier shall form another district:

XLV. The counties of Mason, Jackson, Cabell, Wayne and Wirt shall form another district:

XLVI. The counties of Ritchie, Doddridge, Harrison, Pleasants and Wood shall form another district:

XLVII. The counties of Wetzel, Marshall, Marion and Tyler shall form another district:

XLVIII. The counties of Upshur, Barbour, Lewis, Gilmer and Randolph shall form another district:

XLIX. The counties of Monongalia, Preston and Taylor shall form another district:

L. The counties of Brooke, Hancock and Ohio shall form another district.

Apportionment of Representation.

5. It shall be the duty of the general assembly, in the year one thousand eight hundred and sixty-five, and in every tenth year thereafter, in case it can agree upon a principle of representation, to reapportion representation in the senate and house of delegates in accordance therewith; and in the event the general assembly, at the first or any subsequent period of reapportionment, shall fail to agree upon a principle of representation and to reapportion representation in accordance therewith, each house shall separately propose a scheme of representation, containing a principle or rule for the house of delegates, in connection with a principle or rule for the senate. And it shall be the duty of the general assembly, at the same session, to certify to the governor the principles or rules of representation which the respective houses may separately propose, to be applied in making reapportionments in the senate and in the house of delegates: and the governor shall, as soon thereafter as may be, by proclamation, make known the propositions of the respective houses, and require the voters of the commonwealth to assemble at such time, as he shall appoint, at their lawful places of voting, and decide by their votes between the propositions thus presented. In the event the general assembly shall fail, in the year one thousand eight hundred and sixty-five, or in any tenth year thereafter, to make such reapportionment or certificate, the governor shall, immediately after the adjournment of the general assembly, by proclamation, require the voters of the commonwealth to assemble, at such time as he shall appoint, at their lawful places of voting, and to declare by their votes:

First, whether representation in the senate and house of delegates shall be apportioned on the "Suffrage Basis"; that is, according to the number of voters in the several counties, cities, towns and senatorial districts of the commonwealth:

Or, second, whether representation in both houses shall be apportioned on the "Mixed Basis"; that is, according to the number of white inhabitants contained, and the amount of all state taxes paid, in the several counties, cities and towns of the commonwealth, deducting therefrom all taxes paid on licenses and law process, and any capita-

tion tax on free negroes, allowing one delegate for every seventy-sixth part of said inhabitants, and one delegate for every seventy-sixth part of said taxes, and distributing the senators in like manner:

Or, third, whether representation shall be apportioned in the senate on taxation; that is, according to the amount of all state taxes paid in the several counties, cities and towns of the commonwealth, deducting therefrom all taxes paid on licenses and law process, and any capitation tax on free negroes, and in the house of delegates on the "Suffrage Basis" as aforesaid:

Or, fourth, whether representation shall be apportioned in the senate on the "Mixed Basis" as aforesaid, and in the house of delegates on the "Suffrage Basis" as aforesaid: and each voter shall cast his vote in favor of one of said schemes of apportionment, and no more.

6. It shall be the duty of the sheriffs and other officers taking said polls, to keep the same open for the period of three days, and within five days after they are closed, to certify true copies thereof to the governor, who shall, as early as may be, ascertain the result of said vote, and make proclamation thereof; and in case it is ascertained that a majority of all the votes cast is in favor of either of the principles of representation, referred as aforesaid to the choice of the voters, the governor shall communicate the result of such vote to the general assembly, at its first regular session thereafter; but in case it is ascertained that a majority of all the votes cast is not in favor of either of the principles of representation referred as aforesaid to the choice of the voters, it shall be the duty of the governor, as soon as may be after ascertaining that fact, in like manner to cause the voters to decide between the two principles of representation which shall, at such previous voting, have received the greatest number of votes; and he shall ascertain and make proclamation of the result of the said last vote, and communicate the same to the general assembly at its next regular session; and in either case, the general assembly, at the regular session thereof, which shall be held next after the taking of the vote, the result of which shall have been so communicated to it by the governor, shall reapportion representation in the two houses respectively in accordance with the principle of representation in each, for which a majority of the votes cast were given; and it shall be the duty of the general assembly in every tenth year thereafter to reapportion and distribute the number of senators and delegates in accordance with the same principle.

Qualifications of Senators and Delegates.

7. Any person may be elected senator, who, at the time of election, has attained the age of twenty-five years, and is actually a resident within the district, and qualified to vote for members of the general assembly, according to this constitution. And any person may be elected a member of the house of delegates, who, at the time of election, has attained the age of twenty-one years, and is actually a resident within the county, city, town or election district, qualified to vote for members of the general assembly according to this constitution; but no person holding a lucrative office, no minister of the gospel or priest of any religious denomination, no salaried officer of any banking corporation or company, and no attorney for the commonwealth, shall be capable of being elected a member of either house of assembly. The removal of any person elected to either branch of the general assembly from the county, city, town or district for which he was elected, shall vacate his office.

Powers and Duties of the General Assembly.

8. The general assembly shall meet once in every two years, and not oftener, unless convened by the governor in the manner prescribed in this constitution. No session of the general assembly, after the first under this constitution, shall continue longer than ninety days, without the concurrence of three-fifths of the members elected to each house; in which case, the session may be extended for a further period, not exceeding thirty days. Neither house, during the session of the general assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members in such manner and under such penalties as each house may provide.

9. The house of delegates shall choose its own speaker, and, in the absence of the lieutenant governor, or when he shall exercise the office of governor, the senate shall choose from their own body a president pro tempore; and each house shall appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies: but if vacancies shall occur during the recess of the general assembly, such writs may be issued by the governor,

under such regulations as may be prescribed by law. Each house shall judge of the election, qualification and returns of its members, may punish them for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offence.

10. The members of the assembly shall receive for their services a compensation, to be ascertained by law, and paid out of the public treasury; but no act increasing such compensation shall take effect until after the end of the term for which the members of the house of delegates voting thereon were elected. And no senator or delegate, during the term for which he shall have been elected, shall be appointed to any civil office of profit under the commonwealth, which has been created, or the emoluments of which have been increased, during such term, except offices filled by elections by the people.

11. Bills and resolutions may originate in either of the two houses of the general assembly, to be approved or rejected by the other, and may be amended by either house, with the consent of the other.

12. Each house of the general assembly shall keep a journal of its proceedings, which shall be published from time to time, and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal. No bill shall become a law until it has been read on three different days of the session in the house in which it originated, unless two-thirds of the members elected to that house shall otherwise determine.

13. The whole number of members to which the state may at any time be entitled in the house of representatives of the United States, shall be apportioned as nearly as may be amongst the several counties, cities and towns of the state, according to their respective numbers; which shall be determined, by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

14. In the apportionment, the state shall be divided into districts, corresponding in number with the representatives to which it may be entitled in the house of representatives of the congress of the United States, which shall be formed respectively of contiguous counties, cities and towns, be compact, and include, as nearly as may be, an equal number of the population, upon which is based representation in the house of representatives of the United States.

15. The privilege of the writ of habeas corpus shall not in any case be suspended. The general assembly shall not pass any bill of at-

nowise affect, diminish or enlarge their civil capacities. And the general assembly shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this commonwealth, to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

16. No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived or amended by reference to its title, but the act revived or the section amended shall be re-enacted and published at length.

17. The general assembly may provide that no person shall be capable of holding, or being elected to, any post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of this commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or bearer of such challenge or acceptance.

18. The governor, lieutenant governor, judges, and all others offending against the state, by maladministration, corruption, neglect of duty or other high crime or misdemeanor, shall be impeachable by the house of delegates and be prosecuted before the senate, which shall have the sole power to try impeachment. When sitting for that purpose they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in case of impeachment shall not extend further than to removal from office, and disqualification to hold or enjoy any office of honor, trust or profit under the commonwealth; but the party convicted shall nevertheless be subject to indictment, trial, judgment and punishment according to law. The senate may sit, during the recess of the general assembly, for the trial of impeachment.

Slavery or Freedom.

19. Slavery and involuntary servitude (except for crime) is hereby abolished and prohibited in the State forever.

20. Courts of competent jurisdiction may apprentice minors of African descent on like conditions provided by law for apprenticing white children.

21. The general assembly shall make no law establishing slavery or recognizing property in human beings.

22. A capitation tax, equal to the tax assessed on land of the value of two hundred dollars, shall be levied on every white male inhabitant who has attained the age of twenty-one years; and one equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools; but nothing herein contained shall prevent exemptions of taxable polls in cases of bodily infirmity.

23. Taxation shall be equal and uniform throughout the Commonwealth, and all property shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.

The general assembly may levy a tax on incomes, salaries and licenses; but no tax shall be levied on property from which any income so taxed is derived, or the capital invested in trade or business in respect to which the license so taxed is issued.

24. No money shall be drawn from the treasury but in pursuance of appropriation made by law; and a statement of receipts, disbursements, appropriations and loans shall be published after the adjournment of each session of the general assembly, with the acts and resolutions thereof.

25. On the passage of every act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the vote shall be determined by yeas and nays, and the names of the persons voting for and against the same shall be entered on the journals of the respective houses, and a majority of all the members elected to each house shall be necessary to give it the force of a law.

26. The liability to the state of any incorporated company or institution to redeem the principal and pay the interest of any loan heretofore made, or which may hereafter be made by the state to such

company or institution, shall not be released; and the general assembly shall not pledge the faith of the state, or bind it in any form, for the debt or obligation of any company or corporation.

27. The general assembly shall provide by law for adjusting with the state of West Virginia the proportion of the public debt of Virginia, proper to be born by the states of Virginia and of West Virginia respectively; and may authorize, in conjunction with the state of West Virginia, the sale of all lands and property of every description, including all stocks and other interests owned and held by the state of Virginia in banks, works of internal improvement, and other companies at the time of the formation of the state of West Virginia, and no ordinance passed by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one, adjusting the public debt between Virginia and West Virginia, shall be binding upon this state.

It shall not provide for the payment of any debt or obligation created in the name of the state of Virginia by the usurped and pretended state authorities at Richmond. And it shall not allow any county, city or corporation, to levy or collect any tax for the payment of any debt created for the purpose of aiding any rebellion against the state or the United States.

The legislature shall not provide for the payment of any bonds now held by rebels in arms against the state or United States governments.

28. The general assembly may at any time direct a sale of the stocks held by the commonwealth in internal improvement and other companies located within the limits of this commonwealth, but the proceeds of such sale, if made before the payment of the public debt, shall be appropriated to the payment thereof.

29. No debt shall be contracted by this state except to meet casual deficits in the revenue, to redeem a previous liability of the State or to suppress insurrection, repel invasion or defend the state in time of war. If the state becomes a stockholder in any association or corporation for purposes of internal improvements, such stock shall be paid for at the time of subscription, or a tax shall be levied for the ensuing year sufficient to pay the subscription in full.

General Provisions.

30. The general assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

31. No lottery shall hereafter be authorized by law; and the buying, selling or transferring of tickets or chances in any lottery not now authorized by a law of this state, shall be prohibited.

32. No new county shall be formed with an area of less than six hundred square miles; nor shall the county or counties from which it is formed be reduced below that area; nor shall any county, having a white population less than five thousand, be deprived of more than one-fifth of such population; nor shall a county having a larger white population be reduced below four thousand. But any county, the length of which is three times its mean breadth, or which exceeds fifty miles in length, may be divided at the discretion of the general assembly. In all general elections the voters in any county, not entitled to separate representation, shall vote in the same election district.

33. The general assembly shall confer on the courts the power to grant divorces, change the names of persons, and direct the sale of estates belonging to infants and other persons under legal disabilities, but shall not, by special legislation, grant relief in such cases, or in any other case of which the courts or other tribunals may have jurisdiction.

34. The general assembly shall provide for the periodical registration in the several counties, cities and towns, of the voters therein; and for the annual registration of births, marriages and deaths in the white population, and of the births and deaths in the colored population.

35. The manner of conducting and making returns of elections, of determing contested elections, and of filling vacancies in office, in cases not specially provided for by this constitution, shall be prescribed by law; but special elections to fill vacancies in the office of judge of any court shall be for a full term. And the general assembly may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this constitution.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Governor.

1. The chief executive power of this commonwealth shall be vested in a governor. He shall hold the office for the term of four years, to commence on the first day of January next succeeding his election, and be ineligible to the same office for the term next succeeding that

for which he was elected, and to any other office during his term of service.

2. The governor shall be elected by the voters, at the times and places of choosing members of the general assembly. Returns of the elections shall be transmitted under seal, by the proper officers, to the secretary of the commonwealth, who shall deliver them to the speaker of the house of delegates on the first day of the next session of the general assembly. The speaker of the house of delegates shall, within one week thereafter, in the presence of the senate and house of delegates, open the said returns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen governor by the joint vote of the two houses of the general assembly. Contested elections for governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

3. No person shall be eligible to the office of governor unless he has attained the age of thirty years, is a native citizen of the United States, and has been a citizen of Virginia for five years next preceding his election.

4. The governor shall reside at the seat of government; shall receive five thousand dollars for each year of his services, and while in office, shall receive no other emolument from this or any other government.

5. He shall take care that the laws be faithfully executed; communicate to the general assembly at every session the condition of the commonwealth; recommend to their consideration such measures as he may deem expedient; and convene the general assembly on application of a majority of the members of both houses thereof, or when in his opinion the interest of the commonwealth may require it. He shall be commander-in-chief of the land and naval forces of the state; have power to embody the militia to repel invasion, suppress insurrection, and enforce the execution of the laws; conduct, either in person or in such other manner as shall be prescribed by law, all intercourse with other and foreign states; and, during the recess of the general assembly, fill, pro tempore, all vacancies in those offices for which the constitution and laws make no provision; but his appointments to such vacancies shall be by commission, to expire at the end of thirty days after the commencement of the next session of the general assembly. He shall have power to remit fines and penalties in such cases and

under such rules and regulations as may be prescribed by law; and, except when the prosecution has been carried on by the house of delegates, or the law shall otherwise particularly direct, to grant reprieves and pardons after conviction, and to commute capital punishment; but he shall communicate to the general assembly, at each session, the particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting or commuting the same.

6. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices; and may also require the opinion, in writing, of the attorney general upon any question of law connected with his official duties.

7. Commissions and grants shall run in the name of the commonwealth of Virginia, and be attested by the governor, with the seal of the commonwealth annexed.

Lieutenant Governor.

8. A lieutenant governor shall be elected at the same time, and for the same term as the governor, and his qualification and the manner of his election in all respects shall be the same.

9. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant governor; and the general assembly shall provide by law for the discharge of the executive functions in other necessary cases.

10. The lieutenant governor shall be president of the senate, but shall have no vote; and while acting as such, shall receive a compensation equal to that allowed to the speaker of the house of delegates.

Secretary of the Commonwealth, Treasurer and Auditor.

11. A secretary of the commonwealth, treasurer and an auditor of public accounts shall be elected by the joint vote of the two houses of the general assembly, and continue in office for the term of two years, unless sooner removed.

12. The secretary shall keep a record of the official acts of the governor, which shall be signed by the governor and attested by the secretary; and when required, he shall lay the same, and any papers,

minutes and vouchers pertaining to his office, before either house of the general assembly; and shall perform such other duties as may be prescribed by law.

13. The powers and duties of the treasurer and auditor shall be such as now are, or may be hereafter prescribed by law.

Board of Public Works.

14. There shall be a board of public works, to consist of three commissioners. The state shall be divided into three districts, containing as nearly as may be equal numbers of voters, and the voters of each district shall elect one commissioner, whose term of office shall be six years; but of those first elected, one, to be designated by lot, shall remain in office for two years only, and one other, to be designated in like manner, shall remain in office for four years only.

15. The general assembly shall provide for the election and compensation of the commissioners, and the organization of the board. The commissioners first elected shall assemble on a day to be appointed by law, and decide by lot the order in which their term of service shall expire.

16. The board of public works shall appoint all officers employed on the public works, and all persons representing the interest of the commonwealth in works of internal improvement, and shall perform such other duties as may be prescribed by law.

17. The members of the Board of public works may be removed by the concurrent vote of a majority of all the members elected to each house of the general assembly; but the cause of removal shall be entered on the journal of each house.

18. The general assembly shall have power, by a vote of three-fifths of the members elected to each house, to abolish said board whenever in their opinion a Board of public works shall no longer be necessary; and until the general assembly shall direct an election of a board of public works, after the adoption of this constitution, and such board shall have been duly elected and qualified, the governor, auditor and treasurer of the commonwealth shall constitute said board, and shall exercise the authority and discharge the duties thereof, and the secretary of the commonwealth shall discharge the duties of the clerk of the said board.

Militia.

19. The manner of appointing militia officers shall be prescribed by law.

ARTICLE VI.

JUDICIARY DEPARTMENT.

1. There shall be a supreme court of appeals, district courts and circuit courts. The jurisdiction of these tribunals, and of the judges thereof, except so far as the same is conferred by this constitution, shall be regulated by law. The judges shall be chosen by the joint vote of the two houses of the general assembly, from persons nominated by the governor.

Judicial Divisions.

2. The state shall be divided into sixteen judicial circuits, seven districts and three sections:

I. The counties of Princess Anne, Norfolk, Nansemond, Isle of Wight, Southampton, Greenesville, Surry and Sussex and the city of Norfolk shall constitute the first circuit.

II. The counties of Prince George, Dinwiddie, Brunswick, Mecklenburg, Lunenburg, Nottoway, Amelia, Chesterfield and Powhatan and the city of Petersburg shall constitute the second circuit.

III. The counties of Cumberland, Buckingham, Appomattox, Campbell, Prince Edward, Charlotte and Halifax and the town of Lynchburg shall constitute the third circuit.

IV. The counties of Pittsylvania, Bedford, Franklin, Patrick and Henry shall constitute the fourth circuit.

V. The counties of Accomack and Northampton shall constitute the fifth circuit.

VI. The counties of Elizabeth City, Warwick, York, Gloucester, Mathews, Middlesex, Henrico, New Kent, Charles City and James City and the city of Williamsburg shall constitute the sixth circuit.

VII. The city of Richmond shall be the seventh circuit.

VIII. The counties of Lancaster, Northumberland, Richmond, Westmoreland, King George, Spotsylvania, Caroline, Hanover, King William, King & Queen and Essex shall constitute the eighth circuit.

IX. The counties of Stafford, Prince William, Alexandria, Fairfax, Loudoun, Fauquier and Rappahannock shall constitute the ninth circuit.

X. The counties of Culpeper, Madison, Greene, Orange, Albemarle, Louisa, Fluvanna and Goochland shall constitute the tenth circuit.

XI. The counties of Nelson, Amherst, Rockbridge, Augusta and Bath shall constitute the eleventh circuit.

XII. The counties of Highland, Rockingham, Page, Shenandoah, and Warren shall constitute the twelfth circuit.

XIII. The counties of Clarke, Frederick, Berkeley and Jefferson shall constitute the thirteenth circuit.

XIV. The counties of Alleghany, Botetourt, Roanoke, Craig and Giles shall constitute the fourteenth circuit.

XV. The counties of Grayson, Carroll, Wythe, Floyd, Pulaski and Montgomey shall constitute the fifteenth circuit.

XVI. The counties of Smythe, Tazewell, Bland, Washington, Russell, Scott, Lee, Wise and Buchanan, shall constitute the sixteenth circuit.

3. The first and second circuits shall constitute the first district; the third and fourth circuits the second district; the fifth, sixth and seventh circuits the third district; the eighth and ninth circuits the fourth district; the tenth and eleventh circuits the fifth district; the twelfth and thirteenth circuits the sixth district; and the fourteenth, fifteenth and sixteenth circuits the seventh district.

4. The first and second districts shall constitute the first section, and the third and fourth districts the second section; and the fifth, sixth and seventh districts the third section.

5. The general assembly may, at the end of five years after the adoption of this constitution, and thereafter at intervals of ten years, rearrange the said circuits, districts and sections, and place any number of circuits in a district, and of districts in a section; but each circuit shall be altogether in one district, and each district in one section; and there shall not be less than two districts and four circuits in a section, and the number of sections shall not be diminished.

Circuit Courts.

6. For each circuit a judge shall be chosen in the manner hereinbefore provided, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this constitution. He shall, at the time of being chosen, be at least thirty years of age, and shall have resided in the state one year next preceding his election, and during his continuance in office shall reside in the circuit of which he is judge.

7. A circuit court shall be held at least twice a year by the judge of each circuit, in every county and corporation thereof, wherein a circuit court is now or may hereafter be established. But the judges

in the same district may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit.

District Courts.

8. A district court shall be held at least once a year in every district, by the judges of the circuits constituting the section, and the judge of the supreme court of appeals for the section of which the district forms a part, any three of whom may hold a court; but no judge shall sit or decide upon an appeal taken from his own decision. The judge of the supreme court of appeals of one section may sit in district courts of another section, when required or authorized by the law to do so.

9. The district courts shall not have original jurisdiction, except in cases of habeas corpus, mandamus and prohibition.

Court of Appeals.

10. For each section a judge shall be chosen in the manner hereinbefore provided, who shall hold his office for the term of twelve years, unless sooner removed in the manner prescribed by this constitution. He shall at the time of his being chosen be at least thirty-five years of age, and shall have resided in the state one year next preceding his election, and during his continuance in office he shall reside in the section for which he is chosen.

11. The supreme court of appeals shall consist of the three judges so chosen, any two of whom may hold a court. It shall have appellate jurisdiction only, except in cases of habeas corpus, mandamus and prohibition. It shall not have jurisdiction in civil cases where the matter in controversy, exclusive of costs, is less in value or amount than five hundred dollars, except in controversies concerning the title or boundaries of land, the probat of a will, the appointment or qualification of a personal representative, guardian, committee or curator; or concerning a mill, road, way, ferry or landing, or the right of a corporation or of a county to levy tolls or taxes; and except in cases of habeas corpus, mandamus and prohibition, and cases involving freedom or the constitutionality of a law.

12. Special courts of appeals, to consist of not less than three nor more than five judges, may be formed of the judges of the supreme court of appeals and of the circuit courts, or any of them, to try any cases being on the dockets of the supreme court of appeals when this

constitution goes into operation; or to try any cases which may be on the dockets of the supreme court of appeals, in respect to which a majority of the judges of said court may be so situated as to make it improper for them to sit on the hearing thereof. And a special court of appeals, to consist of not less than three nor more than five judges, may be formed of the judges of the circuit courts, to exercise the jurisdiction and perform the duties of the supreme court of appeals and of the judges thereof, until the judges of the supreme court of appeals shall have been duly chosen and qualified.

13. When a judgment or decree is reversed or affirmed by the supreme court of appeals, the reasons therefor shall be stated in writing, and preserved with the record of the case.

General Provisions.

14. Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office. The salary of a judge of the supreme court of appeals shall not be less than three thousand dollars, and that of a judge of a circuit court not less than two thousand dollars per annum, except that of the judge of the fifth circuit, which shall not be less than fifteen hundred dollars per annum; and each shall receive a reasonable allowance for necessary travel.

15. No judge, during his term of service, shall hold any other office, appointment or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he, during such term, or within one year thereafter, be eligible to any political office.

16. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote; and the cause of removal shall be entered on the journal of each house. The judge against whom the general assembly may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

17. The officers of the supreme court of appeals and of the district courts shall be appointed by the said courts respectively, or by the judges thereof in vacation. Their duties, compensation and tenure of office shall be prescribed by law.

18. The voters of each county or corporation in which a circuit court is held shall elect a clerk of such court, whose term of office shall

be six years. The attorney for the commonwealth, elected for a county or corporation wherein a circuit court is directed to be held, shall be attorney for the commonwealth for that court; but in case a circuit court is held for a city, or for a county and a city, there shall be an attorney for the commonwealth for such, to be elected by the voters of such city or county and city, and to continue in office for the term of four years. The duties and compensation of these officers, and the mode of removing them from office, shall be prescribed by law.

19. When a vacancy shall occur in the office of clerk of any court (except it be a county or corporation court), such court, or the judges thereof in vacation, may appoint a clerk pro tempore, who shall discharge the duties of the office until the vacancy is filled; when such vacancy shall occur in the office of clerk of a county or corporation court (if in vacation), the presiding justice thereof may appoint the clerk pro tempore, who shall discharge the duties of the office until the next term, and then the court shall appoint a pro tempore clerk to serve until the vacancy shall be filled.

20. The general assembly shall provide for the compensation of jurors, but appropriations for that purpose shall not be made from the state treasury, except in prosecutions for felony and misdemeanor.

21. At every election of a governor, an attorney general shall be elected by the voters of the commonwealth for the term of four years. He shall be commissioned by the governor, shall perform such duties and receive such compensation as may be prescribed by law, and be removable in the manner prescribed for the removal of judges.

22. Judges and all other officers, whether elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired, until their successors are qualified.

23. Writs shall run in the name of the commonwealth of Virginia, and be attested by the clerks of the several courts. Indictments shall conclude, against the peace and dignity of the commonwealth.

County Courts.

24. There shall be in each county of the commonwealth a county court, which shall be held monthly, by not less than three nor more than five justices, except when the law shall require the presence of a greater number.

25. The jurisdiction of the said courts shall be the same as that of the existing county courts, except so far as it is modified by this constitution, or may be changed by law.

26. Each county shall be laid off into districts, as nearly equal as may be in territory and population. Such districts, as now laid off by law, shall continue, subject to such changes as may hereafter be made by the general assembly. In each district there shall be elected, by the voters thereof, four justices of the peace, who shall be commissioned by the governor, reside in their respective districts, and hold their offices for the term of four years. The justices so elected shall choose one of their own body, who shall be the presiding justice of the county court, and whose duty it shall be to attend each term of said court. The other justices shall be classified by law for the performance of their duties in court.

27. The justices shall receive for their services in court a per diem compensation, to be ascertained by law, and paid out of the county treasury, and such fees and emoluments for other services as may be allowed them by law.

28. The power and jurisdiction of justices of the peace within their respective counties shall be prescribed by law.

County Officers.

29. The voters of each county shall elect a clerk of the county court, a surveyor, an attorney for the commonwealth, a sheriff, and so many commissioners of the revenue as may be authorized by law, who shall hold their respective offices as follows: The clerk, the commissioner of the revenue and the surveyor, for the term of six years; the attorney for the term of four years, and the sheriff for the term of two years. Constables and overseers of the poor shall be elected by the voters as may be prescribed by law.

30. The officers mentioned in the preceding section, except the attorneys, shall reside in the counties or districts for which they were respectively elected. No person elected for two successive terms to the office of sheriff, shall be re-eligible to the same office for the next succeeding term; nor shall he, during his term of service, or within one year thereafter, be eligible to any political office.

31. The justices of the peace, sheriffs, attorneys for the commonwealth, clerks of the circuit and county courts, and all other county officers, shall be subject to indictment for malfeasance, misfeasance or neglect of official duty; and upon conviction thereof, their offices shall become vacant.

Corporation Courts and Officers.

32. The general assembly may vest such jurisdiction as shall be deemed necessary in corporation courts, and in the magistrates who may belong to the corporate body.

33. All officers appertaining to the cities and other municipal corporations, shall be elected by the qualified voters, or appointed by the constituted authorities of such cities or corporations, as may be prescribed by law.

Done in convention, in the city af Alexandria, on the seventh day of April, in the year of our Lord one thousand eight hundred and sixty-four, and in the eighty-eighth year of the commonwealth of Virginia.

LEROY G. EDWARDS,
Pres't of the Convention.

W. J. COWING,
Sec'y of the Convention.

SCHEDULE.

1. It shall be the duty of the president of this convention, immediately on its adjournment, to certify to the governor a copy of the bill of rights and constitution adopted, together with this schedule.

2. Upon the receipt of such certified copy, the governor shall forthwith announce the fact by proclamation, to be published in such manner as he may deem requisite for general information, and shall annex to his proclamation a copy of the bill of rights and constitution, together with this schedule, all of which shall be published in the manner indicated. Ten printed copies thereof, shall, by the secretary of the commonwealth, be immediately transmitted by mail to the clerk of each county and corporation court in this commonwealth, to be by such clerk submitted to the examination of any person desiring the same.

3. All ordinances and laws in force when this constitution is adopted, and not inconsistent therewith, shall remain and continue as if this constitution was not adopted; and so of all rights, prosecutions, actions, claims and contracts.

4. All executive, judicial and other officers and members of the general assembly now elected shall continue in office until their pres-

ent terms expire, in the same manner as if this constitution had not been adopted. The senate may so fix the term of members first elected thereto from districts not now represented, that one-half the number of senators (or as near that number as may be) shall be elected every two years.

5. The general assembly shall pass all laws necessary for carrying this constitution into full force and effect.

ARTICLE III., on the qualification of voters, in its unamended form was as follows:

1. Every white male citizen of the commonwealth, of the age of twenty-one years, who has been a resident of the state for one year, and of the county, city or town where he offers to vote for six months next preceding an election, and who has paid all taxes assessed to him, after the adoption of this constitution, under the laws of the commonwealth after the re-organization of the county, city or town where he offers to vote, shall be qualified to vote for members of the general assembly, and all officers elective by the people. Provided however, that no one shall be allowed to vote who, when he offers to vote, shall not thereupon take, or shall not before have taken, the following oath: "I do solemnly swear (or affirm) that I will support the constitution of the United States and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the state of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth day of February, eighteen hundred and sixty-one, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as restored by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one, and that I have not since the first day of January, eighteen hundred and sixty-four, voluntarily given aid or assistance, in any way, to those in rebellion against the government of the United States for the purpose of promoting the same." But the legislature shall have power to pass an act or acts prescribing means by which persons who have been disfranchised by this provision shall or may be restored to the rights of voters when in their opinion it will be safe to do so. Any person falsely so swearing shall be subject to the penalties of perjury.

No person shall hold any office under this constitution who shall not have taken and subscribed the oath aforesaid. But no person shall

vote or hold office under this constitution who has held office under the so-called confederate government, or under any rebellious state government, or who has been a member of the so-called confederate congress, or a member of any state legislature in rebellion against the authority of the United States, excepting therefrom county officers.

No person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein; but citizens of this state, when in the military service of the United States, shall be permitted to vote under such regulations as may be prescribed by the general assembly, wherever they may be stationed, the same as if they were within their respective cities, counties or districts. No person shall have the right to vote who is of unsound mind or a pauper, or who has been convicted of bribery in an election, or of any infamous offence.

2. The general assembly, as occasion may require, shall cause every city or town, the white population of which exceeds five thousand, to be laid off into convenient wards, and a separate place of voting to be established in each; and thereafter no inhabitant of such city or town shall be allowed to vote except in the ward in which he resides.

3. No voter, during the time for holding any election at which he is entitled to vote, shall be compelled to perform military service except in time of war or public danger; to work upon the public roads, or to attend any court as suitor, juror or witness; and no voter shall be subject to arrest under any civil process during his attendance at elections, or in going to or returning from them.

4. In all elections for members of the general assembly and other state officers, votes shall be given by ballot, and not viva voce, for which the general assembly shall provide by law, at its first session after the adoption of this constitution, but until such provision shall have been made, votes shall be given as heretofore.

AN ACT

To provide for the selection of delegates to the Constitutional Convention, for the convening of said delegates, the organization of the said Convention, and for submitting the revised and amended Constitution to the people of the State of Virginia for ratification or rejection.

Approved February 16, 1901.

Whereas, in pursuance of an act of the general assembly, approved March fifth, nineteen hundred, entitled "an act to provide for submitting to the qualified voters of the state the question of calling a constitutional convention to be held for the purpose of revising and amending the present constitution," an election was duly held on the fourth Thursday in May, nineteen hundred; and

Whereas the board of state canvassers have certified that at said election a large majority of the qualified voters of this state voted in favor of a constitutional convention, and their determination has been communicated by the governor to this body, and it is now proper to provide plans for the selection of the delegates to such convention, for the convening of said delegates and the organization of the said convention, and for submitting the revised and amended constitution to the people of the state of Virginia for ratification or rejection; therefore,

1. Be it enacted by the general assembly of Virginia, That the delegates to the said convention shall be elected at the election to be held on the fourth Thursday in May, nineteen hundred and one, and the judges of election at the several voting places in the state where otherwise there would be no election held are hereby required to hold an election on said day for the election of delegates to said convention.

2. The ballots to be used in said election shall be furnished by the respective electoral boards of the counties and cities of the commonwealth, and the election of delegates to the convention shall, in all respects, be in accordance with the general election laws of the commonwealth for the election of members of the general assembly, except as hereinafter provided.

3. All persons shall be qualified to vote for delegates to the convention, and shall be eligible to membership therein who are entitled to vote for members of the general assembly under the constitution and laws of this commonwealth.

4. The apportionment and districts shall be as prescribed in this section.

From the counties, cities and towns of each district as now created by law for the election of members to the house of delegates of the general assembly of Virginia there shall be elected by the qualified electors thereof delegates as follows:

Accomac shall have one delegate; Albemarle and the city of Charlottesville shall have two delegates; Alexandria county and the city of Alexandria shall have one delegate; Alleghany, Bath and Highland shall have one delegate; Amherst shall have one delegate; Augusta and the city of Staunton shall have two delegates; Bedford shall have two delegates; Botetourt shall have one delegate; Brunswick shall have one delegate; Buchanan, Dickenson and Wise shall have one delegate; Buckingham and Cumberland shall have one delegate; Campbell shall have one delegate; Campbell and Appomattox shall have one delegate; Caroline shall have one delegate; Carroll shall have one delegate; Charlotte shall have one delegate; Chesterfield, Manchester and Powhatan shall have two delegates; Clarke and Warren shall have one delegate; Craig, Roanoke county and Roanoke city shall have two delegates; Culpeper shall have one delegate; Dinwiddie shall have one delegate; Elizabeth City and Accomac shall have one delegate; Essex and Middlesex shall have one delegate; Fairfax shall have one delegate; Fauquier shall have one delegate; Floyd shall have one delegate; Fluvanna and Goochland shall have one delegate; Franklin shall have one delegate; Frederick and Winchester shall have one delegate; Gloucester and Mathews shall have one delegate; Grayson shall have one delegate; Greene and Madison shall have one delegate; Greenesville and Sussex shall have one delegate; Halifax shall have two delegates; Hanover shall have one delegate; Henrico shall have one delegate; Henry shall have one delegate; Isle of Wight shall have one delegate; King and Queen shall have one delegate; King William and Hanover shall have one delegate; Lancaster and Richmond county shall have one delegate; Lee shall have one delegate; Loudoun shall have one delegate; Loudoun and Fauquier shall have one delegate; Louisa shall have one delegate; Lynchburg shall have one delegate; Lunenburg shall have one delegate; Mecklenburg shall have one delegate; Montgomery and Radford shall have one delegate; Nansemond shall have one delegate; Nelson shall have one delegate; New Kent, Charles City, James City, Warwick, York, Williamsburg, and Newport News shall have one delegate; Norfolk city shall have two

delegates; Norfolk county shall have one delegate; Northampton and Accomac shall have one delegate; Northumberland and Westmoreland shall have one delegate; Nottoway and Amelia shall have one delegate; Orange shall have one delegate; Page and Rappahannock shall have one delegate; Patrick shall have one delegate; Petersburg shall have two delegates; Pittsylvania and Danville shall have four delegates; Portsmouth shall have one delegate; Princess Anne shall have one delegate; Prince Edward shall have one delegate; Prince George and Surry shall have one delegate; Prince William shall have one delegate; Pulaski and Giles shall have one delegate; Rappahannock shall have one delegate; Richmond city shall have five delegates; Rockbridge and Buena Vista shall have two delegates; Rockingham shall have two delegates; Russell shall have one delegate; Scott shall have one delegate; Shenandoah shall have one delegate; Southampton shall have one delegate; Smyth and Bland shall have one delegate; Spotsylvania and Fredericksburg shall have one delegate; Stafford and King George shall have one delegate; Tazewell shall have one delegate; Washington and city of Bristol shall have two delegates; Wythe shall have one delegate.

5. The board of state canvassers shall meet at the office of the secretary of the commonwealth on the first Monday in June, nineteen hundred and one, and shall examine the certified abstracts of said election and issue certificates to delegates to the convention as the same would be issued under section one hundred and forty-two of the Code of Virginia to members elected to the general assembly, and upon the day of the assembling of the convention the secretary of the commonwealth shall lay before it a list of the delegates elected thereto with the districts they represent. If all the abstracts of votes to be counted shall not have been received by the first Monday in June, nineteen hundred and one, the said board shall adjourn from day to day until they shall be so received by the secretary of the commonwealth.

6. The persons who shall be elected in pursuance of this act shall, on Wednesday, the twelfth day of June, nineteen hundred and one, at twelve o'clock, meet and assemble in the hall of the house of delegates at the capitol, in the city of Richmond, in general convention, to consider, discuss and propose a new constitution, or alterations and amendments to the existing constitution.

7. The said convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess, and enjoy, in

the most full and ample manner, all the privileges which members elected to and attending on the general assembly are entitled to; and moreover, shall be allowed the same pay for traveling to, and returning from the said convention, as is now allowed to members of the general assembly, and shall receive for attendance upon said convention the sum of four dollars per day, Sundays included; and the said convention is hereby empowered to appropriate such sums of money as may be necessary to defray the costs of printing and other incidental expenses, and to appoint such officers and to make them reasonable allowances for their services as it shall deem proper, which several allowances shall be audited by the auditor of public accounts and paid by the treasurer of the commonwealth upon proper warrants, to be attested by the clerk and signed by the president of the convention.

8. In the case of any contested election to the convention, the same shall be governed in all respects by the existing laws in regard to contested elections to the senate.

9. The executive of this commonwealth shall have power to award writs of election to supply vacancies which may happen in the convention by death, removal, resignation or other incapacity of any members elected to serve therein, according to the provisions of this act, previously to the meeting of the said convention; but if any such vacancy shall happen after the meeting of the said convention, the presiding officer of the same shall award the said writs, and the election under such writs shall be conducted in all respects as the elections hereinbefore provided for; and all provisions of law relating to special elections held under section one hundred and fifteen, Code of Virginia, shall apply to elections held for the purpose of filling vacancies as aforesaid.

10. It shall be the duty of the presiding officer of the said convention to certify a copy of the constitution as the same shall be revised and amended, to the governor as soon as the convention shall have adjourned *sine die.*

11. It shall be the duty of the governor, upon the receipt of such certified copy, forthwith, by proclamation, to be published in such newspapers of this commonwealth as may be deemed sufficient, to announce the fact, and, moreover, to annex to his proclamation a copy of such revised and amended cunstitution, together with schedule thereto annnexed; which proclamation, constitution, and schedule annexed, shall be published as aforesaid once a week for four successive

weeks, and one hundred printed copies thereof shall be by the governor forthwith transmitted to the clerk of each county and corporation court in this commonwealth, to be by such clerk submitted to the examination of any person who may desire the same.

12. If said convention shall agree upon a revised and amended constitution on or before the fifth day of October, nineteen hundred and one, the said revised and amended constitution shall be submitted to the qualified voters of the commonwealth as a whole or by separate articles or sections, as the convention may determine, for ratification or rejection, at the general election, to be held on the fifth day of November, nineteen hundred and one.

13. Upon the official ballots to be used in the said general election shall be printed the words, "The constitution as revised and amended"; or, article ——, section ——, of the constitution as revised and amended, and underneath shall be the words, "For ratifying," "For rejecting," which shall be on two separate lines and in such type as is provided in the general law, and shall be at least one inch below any other printing on said ballot; or in the event any such articles or sections are submitted separately, then beneath the words indicating such articles or sections shall be printed, in like manner, the words, "For ratifying," "For rejecting," which shall be on two separate lines and in such type as is provided in the general law. Any voter who may desire to vote for the ratification of the constitution or of any article or section separately submitted, shall strike out the words "For rejecting," and those who desire to vote for the rejecting of the constitution or of any article or section separately submitted, shall strike out the words, "For ratifying."

14. Any voter who shall be unable to properly prepare his ballot shall be entitled to require such assistance for that purpose from the judge of election designated to assist illiterate and physically disabled voters, as is now provided under the general election law of the state.

15. The manner of receiving and canvassing said ballots and making returns and abstracts thereof shall conform in all respects to the requirements of the general election laws of the state, except the certificate of judges and clerks, which shall be as follows, or to like effect:

"We hereby certify that at the election held on the fifth day of November, nineteen hundred and one, there were —— votes cast for ratifying the constitution, and —— votes cast for rejecting the consti-

tution"; or, —— votes cast for ratifying —— article or —— section of the constitution as revised and amended and —— votes cast for rejecting —— article, —— section of the constitution as revised and amended.

_____	_____
	_____
_____	_____
Clerks.	Judges.

and the proper official canvassers of general election returns shall canvass these returns in a like manner as other elections returns, and the results shall be certified to the secretary of the commonwealth as the result in other elections is certified.

16. It shall be the duty of the board of state canvassers to canvass said returns at the time returns of the said general election are canvassed; and if it shall appear that a majority of the votes so cast is for ratifying said revised and amended constitution, the secretary of the commonwealth shall certify the fact to the general assembly upon the first day of the next regular session, in order that the constitution thus ratified shall be carried into effect.

17. But if said convention shall not propose a revised and amended constitution on or before the fifth day of October, nineteen hundred and one, it shall remain for the next general assembly to enact such measures as it may deem proper for submitting the said revised and amended constitution to the people of this commonwealth for ratification or rejection.

18. This act shall be in force from its passage.

VOTE AT THE SEVERAL ELECTIONS UNDER THE PRESENT CONSTITUTION ON THE CALL OF A CONSTITUTIONAL CONVENTION.*

VOTE IN 1888.

COUNTIES.	For.	Against.
Accomac	2	2
Albemarle	39	1,518
Alexandria	0	5
Alleghany	2	574
Amelia	0	412
Amherst	50	128
Appomattox	1	162
Augusta	25	1,216
Bath	0	0
Bedford	314	1,725
Bland	12	604
Botetourt	24	600
Brunswick	2	666
Buchanan	0	0
Buckingham	1	87
Campbell	40	167
Caroline	11	903
Carroll	10	290
Charles City	1	643
Charlotte	0	25
Chesterfield	6	2,318
Clarke	321	606
Craig	1	48
Culpeper	210	1,134
Cumberland	1	938
Dickenson	79	329
Dinwiddie	0	0
Elizabeth City	11	1,267
Essex	126	1,134
Fairfax	202	857
Fauquier	5	752
Floyd	6	1,429
Fluvanna	7	494
Franklin	21	870
Frederick	75	1,484
Giles	2	352
Gloucester	6	1,119
Goochland	16	419
Grayson	28	669
Greene	10	291
Greenesville	0	65
Halifax	277	466
Hanover	0	375
Henrico	7	526
Henry	227	704
Highland	0	263
Isle of Wight	1	159
James City	1	592
King George	72	516
King and Queen	31	302
King William	2	631
Lancaster	0	4
Lee	17	595
Loudoun	186	989
Louisa	9	928
Lunenburg	20	50
Madison	22	874
Mathews	56	50
Mecklenburg	6	631
Middlesex	71	858
Montgomery	23	671
Nansemond	0	0
Nelson	62	57
New Kent	4	578
Norfolk	1	1,917
Northampton	136	1,072
Northumberland	44	144
Nottoway	0	1
Orange	1	1,173
Page	56	239
Patrick	163	606
Pittsylvania	5	442
Powhatan	1	507
Prince Edward	6	982
Prince George	4	398
Princess Anne	0	384
Prince William	10	359
Pulaski	1	265
Rappahannock	5	200
Richmond	2	118
Roanoke	15	848
Rockbridge	21	918
Rockingham	47	368
Russell	0	833
Scott	3	140
Shenandoah	16	1,118
Smyth	2	196
Southampton	44	1,811
Spotsylvania	20	445
Stafford	52	633
Surry	6	1,207
Sussex	4	410
Tazewell	2	361
Warren	1	159
Warwick	28	307
Washington	18	1,688
Westmoreland	0	213
Wise	0	382
Wythe	6	380
York	0	546
CITIES.		
Alexandria	24	106
Bristol	.....	.....
Buena Vista	.....	.....
Charlottesville	7	743
Danville	19	1,750
Fredericksburg	0	55
Lynchburg	1	0
Manchester	0	39
Neapolis	0	396
Norfolk	12	86
Petersburg	3	80
Portsmouth	16	46
Radford	.....	.....
Richmond	97	207
Roanoke	1	18
Staunton	3	196
Williamsburg	3	155
Winchester	28	407
Totals	3,695	62,625

* I am indebted to the Hon. J. T. Lawless, Secretary of the Commonwealth, for the abstracts of the vote as here given.—A. R. L.

VOTE IN 1897.

COUNTIES.	For.	Against.	COUNTIES.	For.	Against.
Accomac	744	680	Nelson	416	880
Albemarle	774	1,325	New Kent	44	218
Alexandria	109	399	Norfolk	677	2,537
Alleghany	156	752	Northampton	309	408
Amelia	225	595	Northumberland	200	621
Amherst	223	1,072	Nottoway	222	301
Appomattox	326	109	Orange	226	412
Augusta	1,291	1,476	Page	120	1,597
Bath	137	386	Patrick	380	950
Bedford	1,075	1,403	Pittsylvania	1,581	1,589
Bland	97	695	Powhatan	67	610
Botetourt	272	975	Prince Edward	222	587
Brunswick	631	544	Prince George	140	193
Buchanan	18	805	Princess Anne	48	367
Buckingham	353	762	Prince William	141	578
Campbell	635	638	Pulaski	234	1,161
Caroline	296	724	Rappahannock	20	167
Carroll	84	1,448	Richmond	196	664
Charles City	50	158	Roanoke	356	956
Charlotte	607	373	Rockbridge	701	1,127
Chesterfield	491	879	Rockingham	844	3,013
Clarke	253	385	Russell	193	1,270
Craig	31	204	Scott	140	1,515
Culpeper	623	551	Shenandoah	796	1,893
Cumberland	178	450	Smyth	367	1,393
Dickenson	106	415	Southampton	863	618
Dinwiddie	316	116	Spotsylvania	60	498
Elizabeth City	166	772	Stafford	65	707
Essex	78	152	Surry	123	66
Fairfax	322	1,474	Sussex	169	189
Fauquier	270	694	Tazewell	565	1,283
Floyd	136	1,314	Warren	210	227
Fluvanna	201	381	Warwick	28	282
Franklin	1,394	781	Washington	243	2,939
Frederick	114	664	Westmoreland	181	931
Giles	40	849	Wise	157	1,184
Gloucester	299	447	Wythe	364	1,261
Goochland	388	805	York	65	682
Grayson	176	1,367			
Greene	92	405			
Greenesville	251	486	CITIES.		
Halifax	1,111	1,126			
Hanover	207	725	Alexandria	476	493
Henrico	675	1,483	Bristol	203	139
Henry	576	196	Buena Vista	37	235
Highland	137	361	Charlottesville	239	131
Isle of Wight	212	96	Danville	716	476
James City	23	155	Fredericksburg	27	158
King George	47	655	Lynchburg	852	1,116
King and Queen	171	595	Manchester	86	139
King William	318	338	Newport News	339	438
Lancaster	288	886	Norfolk	582	1,459
Lee	224	1,850	Petersburg	105	372
Loudoun	681	742	Portsmouth	377	177
Louisa	376	986	Radford	80	65
Lunenburg	434	67	Richmond	832	907
Madison	136	758	Roanoke	639	501
Mathews	122	205	Staunton	4	1
Mecklenburg	378	1,740	Williamsburg	14	67
Middlesex	136	424	Winchester	211	329
Montgomery	439	814			
Nansemond	945	211	Totals	38,326	83,453

VOTE IN 1900.

COUNTIES.	For.	Against.	COUNTIES.	For.	Against.
Accomac	892	556	Nelson	1,050	525
Albemarle	1,650	800	New Kent	135	353
Alleghany	118	127	Norfolk	968	2,503
Alexandria	79	432	Northampton	717	434
Amelia	415	562	Northumberland	377	698
Amherst	901	561	Nottoway	939	252
Appomattox	502	67	Orange	518	368
Augusta	1,029	618	Page	335	349
Bath	153	181	Patrick	172	802
Bedford	1,516	1,018	Pittsylvania	1,366	676
Bland	254	294	Powhatan	352	565
Botetourt	667	958	Princess Anne	230	335
Brunswick	935	842	Prince Edward	647	583
Buchanan	12	157	Prince George	167	112
Buckingham	395	328	Prince William	449	206
Campbell	880	853	Pulaski	495	894
Carroll	318	1,309	Rappahannock	247	198
Caroline	621	657	Richmond	158	337
Charles City	74	320	Roanoke	541	498
Charlotte	612	136	Rockbridge	818	862
Chesterfield	854	575	Rockingham	1,118	968
Clarke	381	318	Russell	330	540
Craig	194	141	Scott	243	528
Culpeper	1,035	466	Shenandoah	569	1,098
Cumberland	212	138	Smyth	476	901
Dickenson	.....	.....	Spotsylvania	275	494
Dinwiddie	478	357	Southampton	1,750	738
Essex	333	358	Stafford	213	480
Elizabeth City	463	571	Surry	357	365
Fairfax	466	626	Sussex	532	238
Fauquier	1,102	471	Tazewell	475	1,220
Floyd	286	1,029	Warren	311	49
Fluvanna	401	448	Warwick	128	145
Franklin	863	491	Washington	614	1,878
Frederick	168	264	Westmoreland	297	588
Giles	410	229	Wise	329	405
Gloucester	577	483	Wythe	486	523
Goochland	304	605	York	220	140
Grayson	338	1,044			
Greene	269	218			
Greensville	544	248	CITIES.		
Halifax	1,406	719			
Hanover	884	749	Alexandria	686	615
Henrico	1,101	399	Bristol	512	286
Henry	652	565	Buena Vista	139	120
Highland	95	108	Charlottesville	625	133
Isle of Wight	849	242	Danville	1,266	140
James City	225	159	Fredericksburg	524	264
King George	164	503	Lynchburg	1,386	821
King and Queen	319	473	Manchester	414	119
King William	365	581	Newport News	2,427	369
Lancaster	374	642	Norfolk	4,763	586
Lee	226	737	Petersburg	871	239
Louisa	333	826	Portsmouth	1,365	170
Loudoun	750	610	Radford	343	114
Lunenburg	453	280	Richmond	5,072	781
Madison	478	194	Roanoke	2,372	646
Mathews	225	144	Staunton	639	196
Mecklenburg	1,128	1,478	Williamsburg	191	85
Middlesex	324	478	Winchester	574	345
Montgomery	654	985			
Nansemond	638	703	Totals	77,362	60,875